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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. April 13, 2010

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on April 6, 2010

SELECTION OF VICE-MAYOR

- Ballot Selection of Vice-Mayor

AWARDS AND PROCLAMATIONS

- Proclamations

Celebrate Earth Week
Alcohol Awareness Month
Teresa Sheahan Day (Albert Pike Lodge Teacher of the Year Award)
Young Leaders across Wichita Day
Fair Housing Week
- Awards and Presentations

Master Municipal Clerk Award
Executive Fire Officer Program
Awards and Presentations:

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Rick McNary of Numana – The Feeding Haiti Event at Century II.

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

None

III. NEW COUNCIL BUSINESS

1. Public hearing on the Second Amendment of the Exchange Place Redevelopment Project Plan. (District VI)

RECOMMENDED ACTION: Approve first reading of the Ordinance amending the Exchange Place Project Plan in the amount of \$9,740,000 in TIF-funded project costs, which is based on the apartments not being converted to condominiums, approve first reading of the amended bonding ordinance and approve the Amended and Restated Development Agreement and authorize the necessary signatures.

2. Public Hearing and Request for Letter of Intent for Health Care Facilities Revenue Bonds, Larksfield Place. (District II)

RECOMMENDED ACTION: Close the public hearing and approve a Letter of Intent for Health Care Facilities Revenue Bonds to Larksfield Place, in an amount not-to-exceed \$12,800,000, subject to the Letter of Intent Conditions, and authorize the necessary signatures.

3. Request for Qualifications – ILWS/ASR Program Review/Interim Water Utilities Director.

RECOMMENDED ACTION: Approve the Project and Agreement and authorize the necessary signatures.

4. Amendments to Chapter 5.26 relating to Possession of Controlled Substances.

RECOMMENDED ACTION: Approve first reading of the ordinance as submitted.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

IV. NON-CONSENT PLANNING AGENDA

None

V. CONSENT PLANNING AGENDA (ITEMS 1 AND 2)

1. *SUB2009-00085 - Plat of South Meridian Odor Control Facility Addition located on the east side of Meridian, north of 47th Street South. (District IV)

RECOMMENDED ACTION: Approve the plat and authorize the necessary signatures for approval of the plat and as owners.

2. *VAC2009-00026 - Request to vacate platted drainage and utility easements; generally located between 13th Street North and the railroad tracks ½ mile north of 13th Street North and west of Greenwich Road. (District II)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Summer Jackson, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VIII. NON-CONSENT AIRPORT AGENDA

None

IX. CONSENT AIRPORT AGENDA (ITEMS 1 AND 2)

1. *Flight Safety International - Supplemental Agreement No. 2.

RECOMMENDED ACTION: Approve the Supplemental Agreement and authorize the necessary signatures.

2. *United Collateral Access Agreement.

RECOMMENDED ACTION: Approve the Collateral Access Agreement and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 12A)

1. Report of Board of Bids and Contracts dated April 12, 2010.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2010</u>	<u>(Consumption off Premises)</u>
Thuan T Ngo	CT Happy Store	2199 North Woodlawn
Nuot Van Nguyen	Thai Bihn Mkt	1530 West 21st Street
Hirsham Mubardin	Wichita Petroleum, Inc.	7101 East Lincoln Street

<u>Renewal</u>	<u>2010</u>	<u>(Consumption on Premises)</u>
Troy Hendricks	Auburn Hills Golf Course*	443 South 135th West
Juan P. Reyes	El Jalisco Restaurant*	627 East 47th Street South

<u>New</u>	<u>2010</u>	<u>(Consumption off Premises)</u>
Juan A Castaneda	Angela's Café	2119 West 21st

* General/Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Street Paving in Cedar View Village Addition, east of Greenwich, south of Kellogg. (District II)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Property Acquisition:

- a. Partial Acquisition of Land along the Northwest Corner of Willow Lake Road and SW 60th Street for the Integrated Local Water Supply Plan. (Harvey County)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

6. Minutes of Advisory Boards/Commissions.

Board of Park Commissioners, December 31, 2009

Wichita Board of Appeals of Refrigeration, Air-Conditioning, Warm Air Heating and Boiler, February 25, 2010

Design Council, March 17, 2010

Arts Council, March 11, 2010

Police and Fire Retirement System, February 24, 2010

Transit Advisory Board, March 12, 2010

RECOMMENDED ACTION: Receive and file.

7. Contracts and Agreements for March 2010.

RECOMMENDED ACTION: Receive and file.

8. Purchase Option, McCormick Armstrong, Co. (District I)

RECOMMENDED ACTION: Adopt the Resolution authorizing the Special Warranty Deed, Bill of Sale and the Termination of Lease Agreement for McCormick Armstrong and authorize the necessary signatures.

9. Hail Damage Partial Insurance Settlement for City Buildings.

RECOMMENDED ACTION: Approve the project, adopt the Resolution, authorize transfers as required and authorize the necessary signatures.

10. Acquisition by Eminent Domain of Tracts Required for the 119th Street West from Kellogg to Maple Improvement Project. (District V)

RECOMMENDED ACTION: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property and directing the City Attorney to file the appropriate proceedings in the District court to accomplish such acquisition.

11. Acquisition by Eminent Domain of Tracts Required for the 47th Street South from Meridian to Seneca Improvement Project. (District IV)

RECOMMENDED ACTION: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property and directing the City Attorney to file the appropriate proceedings in the District court to accomplish such acquisition.

12. Second Reading Ordinances: (First Read April 6, 2010)
 - a. List of second reading ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Workshop to follow

**City of Wichita
City Council Meeting
April 13, 2010**

TO: Mayor and City Council

SUBJECT: Public hearing on the Second Amendment of the Exchange Place Redevelopment Project Plan (District VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendations: Close the public hearing, approve course of action based on staff recommendation.

Background: On May 8, 2007, the City Council adopted an ordinance establishing a redevelopment district in the area between English Street, First Street North, Broadway Avenue and Main Street, for the purpose of allowing the use of tax increment financing (TIF) to pay a portion of the costs of constructing redevelopment projects in that area. On July 24, 2007, the City Council adopted the Exchange Place Project Plan. On January 6, 2009, the City Council approved an amendment to the TIF Project Plan and Development Agreement. Since that time, Exchange Place, LLC (“Developer”) has made substantial changes to the redevelopment project, and has requested an amendment to the TIF Project Plan and Development Agreement in order to proceed with the project. A resolution adopted by the City Council on March 23, 2010 set April 13, 2010 as the date for a public hearing to consider the proposed amendments.

Analysis: The Exchange Place Project Plan and Development Agreement originally approved by the City Council called for construction of a multi-level parking structure and conversion of two vacant high-rise buildings into a condominium complex consisting of 91 residential condo units, residential parking spaces and ground floor retail space.

The January 6, 2009 amendment included the City purchasing an additional property, the Bitting Building (107 North Market), using TIF funds, and conveying it to the Developer. The 91 condominiums in the Exchange Place Building were replaced with a total of 201 apartments in both the Exchange Place and Bitting buildings. The developer may choose, at a later time, to convert the apartments into residential condominiums. The new Project Plan also increased the number of spaces in the parking garage from 175 to 229. The project area was increased to include the Bitting Building. The additional property acquisition and larger parking garage increased the proposed TIF-funded development costs from approximately \$6 million to \$9.3 million.

The Developer has recently made additional changes to the project due to structural issues, construction costs related to the parking garage, additional improvements needed for a pedestrian sky bridge between buildings, and repairs to the sidewalks around the project area. The Developer seeks to increase the number of apartments from 201 to 230 units, convert the parking garage from self-parking to automated parking, and increase the number of parking spaces from 229 to 298. The additional costs related to the changes would increase the TIF-eligible development costs from \$9.3 million to \$11.8 million.

A comparison table is provided below to identify the project changes from the original plan to the current proposed amendment.

	2007 – Approval	2008 – First Amendment	2010 – Second Amendment
TIF eligible amount	\$6,000,000	\$9,300,000	\$11,620,000
Private Investment	\$15,000,000	\$18,500,000	\$34,871,728
Total Investment	\$21,000,000	\$27,800,000	\$46,491,728
Market Value	\$15,960,000	\$33,803,000	\$41,695,000
Residential Units	91 condos	201 apartments	230 apartments
Parking spaces	175	225	298

The proposed increase in the amount of TIF funding requires amendment of the TIF Project Plan. A new list of TIF eligible costs and revisions to the comprehensive financial feasibility study are included in the attached First Amendment to the TIF Project Plan as Exhibits B and C respectively.

Staff has worked extensively with the Developer to determine the ability of the amended project to generate sufficient increases in property value to allow TIF funding of the entire TIF eligible costs of \$11,620,000. Staff analysis of the TIF funding capacity is based on projected valuations of several Real Development properties located within the TIF District, using assumptions about rental rates, operating expenses and capitalization rates for each building. A table of projected valuations is attached.

A key variable in the analysis is the proposed conversion of individual apartments in the Exchange Place complex from for-rent apartments to for-sale condominiums. It is the Developer's firm intention and commitment to convert the apartments to condos after the HUD-required holding period has expired and subject to market absorption rates. Staff has consulted with Goody Clancy on the question of for-sale price points and market absorption. There is consensus that condo conversion is feasible, but also that there is no assurance that the condo conversion will actually occur in the future.

Staff has analyzed three principal scenarios to determine TIF funding capacity, outlined below:

Full funding of TIF-eligible project costs (\$11,620,000)

If the Developer succeeds in converting the apartment complex to condominiums by 2021 at an average unit sales price of \$163,000 (\$200/SF), projected TIF cash flow would amortize TIF bonds in a large enough principal amount to cover the requested \$11,620,000 in TIF-eligible project costs. However, the ratio of available cash flow to bond payments would be 1.09 to one, which is below the recommended 1.20-to-one standard. Without condo conversion, the debt service coverage ratio would be one-to-one.

TIF funding based on conversion of apartments to condominiums (\$10,635,000)

If the condo conversion is completed as above, the projected cash flow would support a TIF bond capable of paying \$10,635,000 in project costs, with a 1.20x debt service coverage ratio.

TIF funding based on apartments only – no condo conversion (\$9,740,000)

If the Exchange Place continues to be operated as a for-rent apartment complex, without condo conversion, projected TIF cash flow would allow bonding of \$9,740,000 in project costs, with a 1.20x coverage ratio.

Possible Gap Financing

If an amount less than the full \$11,620,000 is approved, there could be a gap of up to \$2,000,000 needed for project funding. There is a possibility of using the Community Improvement District (CID) program to provide gap financing, using CID special assessments. It is not known at this time whether this will be acceptable to HUD.

DEVELOPMENT AGREEMENT

In order to implement the amended project plan, corresponding changes to the development agreement are required. The attached Second Amended and Restated Development Agreement replaces the previously approved development agreement. Changes in the agreement generally reflect the changes to

the scope of the project as outlined above. In addition, the amended development agreement includes the following substantive changes:

- A requirement for the Developer to meet annually with the County Appraiser to provide actual operating information on each building located within the project area that is managed by the Developer or an affiliate.
- A requirement that the Wichita Executive Center be fully refinanced and all outstanding financial obligations relating to the building paid in full as a condition of disbursement of any TIF funds.
- Addition of personal guarantees from the principals of the Developer entity to cover the Tax Increment Shortfall Guaranty.
- Removal of the “burn-off” provision in the Tax Increment Shortfall Guaranty to ensure that the guaranty will continue even after the project has reached the full projected valuation, as an additional safeguard against later appealing the value in order to lower taxes.

Financial Considerations: The financing structure for the new project amount calls for the issuance of full faith and credit TIF bonds, which are paid by TIF revenues generated by the property within the TIF district but are additionally secured by the City’s general credit. The cash flow analysis takes into account the possibility of property tax appeals in the TIF district. In each scenario outlined above, the par amount of TIF bonds includes project costs plus construction period interest, financing costs and project management costs. The attached bonding ordinance will authorize the increased amount to be bonded, as approved by City Council.

Goal Impact: Economic Vitality and Affordable Living, Quality of Life, Core Area and Neighborhood. Redevelopment of blighted and declining areas is needed to avoid economic stagnation. Business prospects and workers seeking to relocate are attracted to cities with vibrant downtowns.

Legal Considerations: State law requires amendment of the district plan or the project plan if a substantial change to the project is proposed which materially changes either plan. The amount of increase in the TIF-funded project costs is sufficient to warrant amendment of the project plan. Because the general characteristics of the project are relatively unchanged however, amendment of the district plan is not required.

The resolution setting the public hearing on the proposed TIF project plan amendments was published on two consecutive weeks in the City’s official newspaper, in accordance with state law. The attached ordinance, amendment to the TIF project plan, amended bonding ordinance and amended and restated development agreement have been reviewed by the Department of Law and approved as to form. Adoption of the ordinance approving project plan amendments requires a two-thirds majority vote of the City Council.

Recommendation/Action: It is recommended that City Council approve first reading of the Ordinance amending the Exchange Place Project Plan in the amount of \$9,740,000 in TIF-funded project costs, which is based on the apartments not being converted to condominiums, approve first reading of the amended bonding ordinance and approve the Amended and Restated Development Agreement; and authorize the necessary signatures.

Attachment(s):

- Ordinance approving the amendment of the Exchange Place Project Plan;
- Second Amendment to the Exchange Place Project Plan;
- Amended bonding ordinance;
- Second Amended and Restated Development Agreement Regarding Development of the Exchange Place Project;
- Exchange Place TIF Valuation Table.

04/13/2010

SECOND
AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
REGARDING DEVELOPMENT
OF
THE EXCHANGE PLACE BUILDING,
MICHIGAN BUILDING
BITTING BUILDING
AND
PARKING GARAGE

CITY OF WICHITA, KANSAS
AND
EXCHANGE PLACE, LLC

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EXHIBITS

A	Site Plans
B	Development Budget
C	Development Schedule
D	Development Concept
E	Schedule of Tax Projections
F	Legal Descriptions – Project Land
G	Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements
H	Exchange Place Project Taxable Properties (Legal Descriptions and Common Building Names)
I	Certification of Expenditure Form

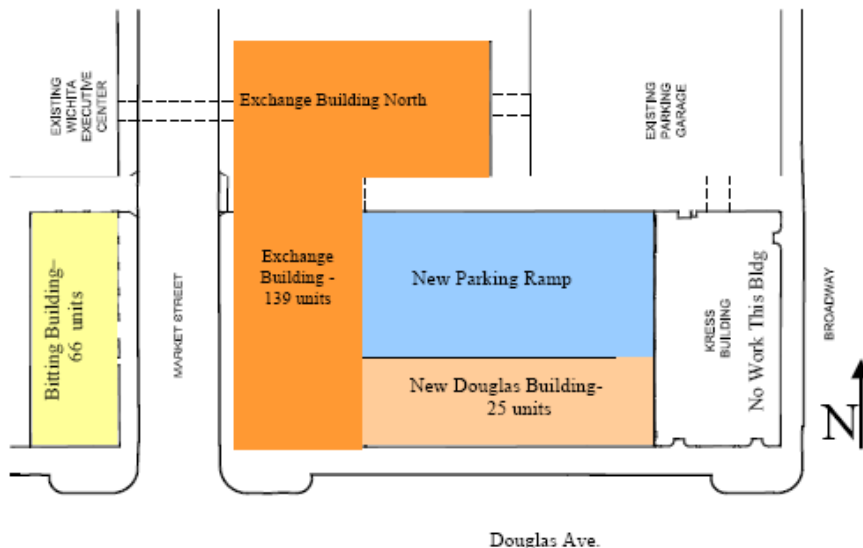
**SECOND AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
for
THE EXCHANGE PLACE BUILDING
MICHIGAN BUILDING
BITTING BUILDING
AND
PARKING GARAGE**

THIS AGREEMENT is made Effective _____, 2010 between the **City of Wichita**, a corporate body politic and political subdivision of the State of Kansas (the "**City**"), and **Exchange Place, LLC**, a Kansas limited liability company ("**Developer**"). It amends and restates the Development Agreement for the Exchange Place Building, Michigan Building and Parking Garage dated July, 2007 and Amended and Restated December 16, 2008.

Summary

This Agreement concerns plans to renovate the North side of the 200 block of East Douglas and the Northwest Corner of Douglas and Market. Exchange Place Building (110 N. Market) the Bitting Building (107 N. Market) and the new Douglas Building will be converted into a residential and commercial complex.

The Project complex consists of 230 residential units on upper levels, retail on the first floors and a new 298 stall parking garage. The garage will serve the apartments at Exchange and Douglas buildings, retail businesses and adjacent office buildings. The new 6 story parking garage structure will be constructed immediately east of the Exchange Place Building (212 E. Douglas) and immediately North of the new Douglas Building. A new 25 unit apartment building will be constructed on Douglas immediately east of the Exchange Place Building (212 E. Douglas) on three levels (2-4) with retail space below on first floor. It will adjoin the south end of the new garage (210 E Douglas).



Overall, the Project will provide:

- 139 residential apartments at Exchange Place Building.
- 66 residential apartments at the Bitting Building.
- 25 residential units at the new construction Douglas Building.
- approximately 16,000 square feet of street level retail space.
- approximately 298 parking spaces providing an effective inventory capable of handling 298 vehicles overnight and another 230 + spaces for daily users. A minimum of 195 spaces will be allocated for use by the apartments. The remaining 103 spaces will be for public parking.
- 14 parking spaces behind the Exchange Place Building.

This work with the apartments, the retail space, and the Parking Garage is collectively described as the Project.

Background and Recitals

The following Background and Recitals contain merely an overview of the Project and are not intended to fully describe the obligations of the City and Developer. The specific terms and obligations are more fully set forth in the Agreement itself.

- (i) The City will assist financing part of the Project through tax increment financing of the Parking Garage and certain of the costs related to the Exchange Place, Bitting and Michigan Buildings as allowable by state law.
- (iii) Developer will develop the Exchange Place Building, Bitting Building and Douglas Building according to the Development Plan.
- (iv) Developer will cause the Parking Garage to be constructed according to the Development Plan.
- (v) The Michigan Building will be completely removed.
- (vi) Developer will own the Exchange Place Building, the Bitting Building, the Douglas Building, Parking Garage and the apartments located in all of these buildings.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

Section 1

Definitions and Exhibits

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used with an initial capital letter, shall have the following meaning:

"Agreement" means this Development Agreement.

"Bitting Building" means the Bitting Building located at the northwest corner of Douglas and Market in Wichita, Kansas, with a legal description given on Exhibit F.

"City" means the City of Wichita, a corporate body politic, and whenever this Agreement requires "approval of the City" or words of similar intent, that approval must come from the City Council, except as otherwise expressly provided herein.

"City Contribution" means the sum of not to exceed Nine Million Seven Hundred, Forty Thousand Dollars (\$9,740,000) which the City shall fund for the City Improvement Expenditure, the City Sidewalk Expenditure and the City Parking Garage Expenditure.

"City Council" means the City Council of the City of Wichita.

"City Improvement Expenditure" means the sum of not to exceed Three Million Three Hundred, Twenty Five Thousand Dollars (\$3,325,000) which the City shall fund in part for reimbursement of land acquisition, demolition, site preparation and such other "redevelopment project costs" as defined and permitted under K.S.A. 12-1770a, as amended. This amount may be reduced in order to not exceed the total City Contribution.

"City Sidewalk Improvement Expenditure" means the sum of not to exceed Sixty Thousand Dollars (\$60,000) which the City shall fund in part for reimbursement of sidewalk repair and/or replacement along Douglas and Market adjacent to the "Exchange Place Building", the "Bitting Building" and the new "Douglas Building" as defined and permitted under K.S.A. 12-1770a, as amended. This amount may be reduced in order to not exceed the total City Contribution.

"City Parking Garage Expenditure" means the sum of not to exceed Eight Million, Two Hundred Thirty Four Thousand, Seven Hundred Thirty Dollars (\$ 8,234,730.72) which the City shall fund to develop and construct the Parking Garage. This amount may be reduced in order to not exceed the total City Contribution.

"City Representative" means the City Manager of the City or his or her designee. The City Representative shall have full power and authority to implement the decisions of the City Council and to act on behalf of the City in the exercise of its rights and responsibilities under this Agreement. Developer may rely on the decisions and direction of the City Representative as the directions of the City; provided, however, if any action requires an amendment to this Agreement, it shall require the approval of the City.

"Completed" or **"Completion"** means, with respect to the Project when: (a) the Project Architect certifies in writing to the City and Developer that the construction of the Project is substantially completed in accordance with the Development Plan to permit use of the Project for the purposes for which it was intended, and (b) a conditional or final occupancy permit has been issued, which date may precede the full completion of all punch-list items, and nonessential landscaping and similar design and development functions.

"Contractors" means the General Contractor and all other contractors, subcontractors, suppliers, persons, or entities that are engaged for construction or to provide labor, materials, supplies, or services of any kind in regard to the Project.

"Developer" means Exchange Place, LLC, a Kansas limited liability company (or its affiliate with the approval of the City Representative).

"Developer Improvement Contribution" means the sum of at least **Thirty Four Million Eight Hundred Thousand Dollars (\$34,800,000)** in equity funds and Loan proceeds that Developer shall make available to develop and construct the residential and commercial space as described in the Project and as set forth in the Development Budget.

"Development Budget" means a budget or budgets, including modifications of the budget(s), for the total cost of development and construction of the Project, including design, development, financing, construction, furnishing, fixturing, landscaping, hardscaping, equipping and pre-opening, as approved by the City and attached as Exhibit B.

"Development Concept" means the Development Concept attached as Exhibit D.

"Development Plan" means the Site Plan, drawings and specifications, Development Schedule, and Development Budget for the Project as approved by the City and Developer at the time of execution of this Agreement and as the same are amended by Developer with the approval of City Representative from time to time. The Parties anticipate that the Development Plan will be amended from time to time to reflect changes in market conditions and economic demands and that such changes are within the scope and intent of this Agreement, so long as the changes are consistent with the original Development Concept. To the fullest extent permitted by applicable law and ordinance, the City Representative is authorized to approve Development Plan changes consistent with the Development Concept.

"Development Schedule" means the development schedule for the Project attached as Exhibit C.

"Douglas Building" means a newly constructed building located between the Exchange Place Building and the Kress Building on Douglas Avenue in Wichita, Kansas, with a legal description given on Exhibit F.

"Exchange Place" means the apartments and street level retail space to be constructed and owned by the Developer, located in the Exchange Place Building, the Bitting Building, and the Douglas Building.

“Exchange Place Building” means the Exchange Place Building located at the northeast corner of Douglas and Market in Wichita, Kansas, with a legal description given on Exhibit F.

“Exchange Place Project Taxable Properties” means those properties described on Exhibit H which shall be considered for purposes of determining the incremental property tax valuation.

“Force Majeure” means war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, Acts of God or other cause or contingency similarly beyond control of the Party whose performance is affected thereby, but shall not include weather delays caused by rain, snow, or the like, or Project cost increases due to unforeseen conditions or price increases, or the like.

“General Contractor” means the general contractor(s) for the Exchange Place Building, Bitting Building and the General Contractor for the Parking Garage, as the case may be, to be selected by Developer.

“Kress Building” means the building currently located at the Northwest corner of Douglas and Broadway with a street address of 100 N. Broadway.

“Loan” means a loan from a lender(s) to Developer in an amount sufficient to allow Developer to complete the Developer Improvement Contribution pledging some or all of the Project Land and improvements.

“Loan Commitment” means a Letter of Invitation or other written loan commitment given to Developer from H.U.D. (The United States Department of Housing and Urban Development) or other lender on terms acceptable to Developer and in an amount sufficient to allow Developer to complete the Developer Improvement Contribution.

“Michigan Building” means the property commonly known by that name and located at 206 East Douglas, Wichita, Kansas, with a legal description given on Exhibit F.

“Parking Facilities” means and consists of two combined areas: the new 298 space Parking Garage and the existing 14 parking spaces located at the north area of Exchange Place Building. Collectively, the Parking Facilities will contain approximately 312 parking spaces.

“Parking Garage” means a multilevel parking facility of approximately 298 parking spaces to be constructed by Developer on the 200 block of East Douglas, east of the Exchange Place Building and west of the Kress Building, with a legal description given on Exhibit F.

“Parties” means, collectively, the City and Developer; **“Party”** means either of the Parties.

“Project” means plans to renovate the Exchange Place Building and the Bitting Building into a residential and commercial complex, and construction of a new residential building and Parking Garage on the same block east of the Exchange Place Building and west of the Kress Building. Overall, the Project will provide:

- 139 residential apartments at Exchange Place Building.
- 66 residential apartments at the Bitting Building.
- 25 residential apartments at the Douglas Building.
- approximately 16,000 square feet of street level retail space.
- approximately 298 parking spaces providing an effective inventory capable of handling 298 vehicles overnight and another 200+ spaces for daily users. A minimum of 195 spaces will be allocated for use by the apartments. The remaining 103 spaces will be for public parking.
- 14 parking spaces behind the Exchange Place Building.

"Project Architect" means the architect for the Project, to be selected by the Developer.

"Project Land" means the tracts or parcels of land upon which the Exchange Place Building, Bitting Building, Douglas Building, and Parking Garage site are located, described on Exhibit F, together with all rights, privileges, licenses and easements appurtenant to such tracts.

"Site Plans" means the elevation, drawings and plans depicting the appearance of the Project attached as Exhibit A.

"Specialists and Consultants" means the Project Architect and the Contractors, together with other planning, architectural, engineering, interior design and other specialists and consultants selected by the Developer for the design and construction of the Project.

"Tax Increment Shortfall" means the amount equal to the difference between the amounts actually paid to the City by the Sedgwick County Treasurer as incremental property taxes collected for the Center City South Redevelopment District or Exchange Place Project Taxable Properties, as the case may be, pursuant to K.S.A. 12-1770 *et seq.*, and the amount projected to be paid by the City as debt service on the City's tax increment financing bonds as set forth in Exhibit E, commencing the first year in which a payment is due on the City tax increment financing bonds issued to finance the City's costs hereunder. The attached Exhibit E is an example and will be replaced with an Exhibit E reflecting the actual interest rates and debt service after the bonds are sold.

1.2 Other Definitions. In addition to the terms defined in Section 1.1, other terms will have the definitions provided elsewhere in this Agreement.

1.3 Exhibits. The exhibits identified in this Agreement and attached to it, or otherwise identified by the signing or initialing of the Parties, are incorporated by reference and made a part of this Agreement as though they were fully set forth in the text of this Agreement.

Section 2 **Project**

2.1 Project. Developer shall provide the Developer Improvement Contribution, and shall provide all services, equipment, materials, supplies, labor, and every article of any kind necessary or appropriate for the planning, development, construction, and furnishing of the Project, including those needed or appropriate for opening of the Project for business, all in accordance

with the Development Plan. Developer shall be an independent contractor for all purposes, and nothing contained in this Agreement nor any actions of the Parties shall be construed to create a partnership, joint venture, or agency relationship between the City and Developer. No one performing work on the Project under the direction of Developer, or under the direction of any of the Contractors, shall be deemed to be an employee of the City for any reason or purpose whatsoever.

2.2 Funding of Project Land Acquisition. The City will pay an amount up to the \$3,325,000 amount established as the City Improvement Expenditure to the Developer for related acquisition and other expenses authorized by K.S.A. 12-1770a and in compliance with applicable law upon satisfaction of environmental and title requirements and delivery of the documents in Section 3.1.1 below.

2.3 Project Use. Subject to applicable statutory requirements, Developer may convert and sell some or all of the apartments into condominiums at some point in the future. Any such sale might include a sale of the Parking Facilities to the condominium owners.

2.4 Conditions Precedent to Project. The following matters shall be completed prior to disbursement of any City Improvement Expenditure.

2.4.1 Developer shall provide satisfactory evidence to the City Representative that Developer has (i) secured adequate commitment for HUD funding by meeting line item requirement of Section J, #15(c), Total Settlement Requirements of the HUD 92013; (ii) escrowed cash or line of credit amount required for owner under the aforesaid HUD funding; and (iii) secured a written commitment or commitments for a loan, in an aggregate amount at least equal to the difference between the Loan Commitment for HUD funding and the \$34.8 Million amount of the Developer Improvement Contribution.

2.4.2 Developer shall deliver to the City Representative documentation acceptable to the City showing that all outstanding indebtedness encumbering the Wichita Executive Center has been refinanced and all creditors with claims relating to said property have been paid in full.

2.4.3 The City Representative shall receive fully executed Guaranty Agreements from Michael Elzufon and David Lundberg, relating to the Tax Increment Financing Guaranty as set forth in Section 8 below.

Section 3 **Construction Phase**

3.1 Conditions Precedent to Construction. The following matters shall be completed before construction begins on the Project.

3.1.1 Delivery of Documents. The documents listed below (or copies), as well as any other documents reasonably required prior to commencement of construction, have been delivered to the City Representative. When necessary, Developer shall also procure the requisite filings of such documents with the appropriate officials:

- (a) Construction permit and all other permits required before commencement of construction;
- (b) Policies or certificate(s) of insurance evidencing that Developer has procured all insurance required by this Agreement;
- (c) Satisfactory evidence to City Representative that the General Contractor selected by Developer to construct the Project is a registered contractor in good standing under the laws of Kansas and the laws of its state of its domicile;
- (d) The Development Budget;
- (e) The Development Plan;
- (f) Performance and labor and material payment bonds as required by City's Charter Ordinance No. 203, dated September 19, 2006;
- (g) Executed copies of the construction contract between Developer and the General Contractor, and the contract between the Developer and the Project Architect (Owner-Architect Agreement (AIA B181));
- (h) Such other documentation including plans and specifications, schematic drawings and renderings of the Project as may reasonably be requested by the City Representative to insure the orderly development of the Project;
- (i) Path of schedule for the Project agreed upon by Developer and the City Representative;
- (j) All approvals from the Historic Preservation Board and all similar approvals needed for development of the Project have been obtained in writing; and
- (k) Developer and the City Representative have provided each other with their respective written waivers of their rights to cancel this Agreement under Section 9.20.

3.1.2 Closing. Developer closing on acquisition of the Exchange Place Building, Bitting Building and the site for the location of the Parking Garage.

3.2 Construction. Developer will cause commencement of construction of the Project to begin promptly upon completion of the conditions in Section 3.1.1 and 3.1.2 and receipt of the acquisition costs pursuant to Section 2.2, and Developer will pursue Completion of construction with due diligence thereafter. During construction Developer agrees to the following conditions and instructions (where applicable, to the respective parts of the Project):

- (a) To cause construction of the Project in a workmanlike manner, free of any material defects, in accordance with the final plans and specifications, and in

accordance with all applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws);

- (b) To obtain all utility permits, certificates of occupancy, and all other licenses, permits and easements required for the operation of the Project;
- (c) Supervise the timely and efficient performance of the Contractors and the Specialists and Consultants under their respective contracts with Developer to enable them to perform their work in a timely, safe, professional and workmanlike manner.
- (d) To utilize an invitation and selection procedure for selecting the General Contractor for the Parking Garage acceptable to the City.

3.3 Disbursements for Parking Garage. The City shall disburse an amount up to the amount established as the City Parking Garage Expenditure, not to exceed the City Contribution amount, for the statutorily eligible construction costs of the Parking Garage incurred by the Developer in accordance with the construction contract for the Parking Garage (the “qualified costs”), subject to the additional requirements set forth herein.

As a condition of the disbursement, the Developer shall submit a Certification of Expenditure in the form attached hereto as Exhibit I attesting to the incurrence of qualified costs in accordance with the procedures outlined hereinbelow.

- (a) The Developer shall submit to the City a written request in the form of Exhibit I setting forth the amount for which disbursement is sought and identification of the qualified costs to which each relates.
- (b) The request shall be accompanied by a form AIAG702 Application and Certificate for Payment.
- (c) The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a request is submitted, to examine the Developer’s and others’ records relating to all costs to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

The City shall have twenty (20) calendar days after receipt of any request hereunder to review and respond to any such request by written notice to the Developer. If the submitted documentation demonstrates that: (a) the costs included in the request are qualified costs, (b) the costs were incurred, and (c) Developer is not in material default under this Agreement, then the City shall process the request in accordance with established fiscal and accounting procedures of the City, approve the request and make, or cause to be made, the disbursement within twenty (20) days after submittal. If the City disapproves the request, the City shall notify the Developer in writing of the reason for such disapproval within such twenty (20) day period after receipt of a request for payment, and the reason for disapproval must be stated. Only disputed amounts shall be withheld

from any pay request.

Section 4

Additional Rights and Obligations

4.1 Approvals. Whenever this Agreement requires the consent or approval of the City Representative, the City Representative, in his or her sole discretion, may instead present the question to the City Council for the necessary consent or approval. Notwithstanding the foregoing, the Parties intend that City Council approval shall not be required or necessary for changes in the Development Plan which do not affect the City's expenditures and are consistent with the Development Concept, unless otherwise required by law.

4.2 Title to Property. Developer shall own the improvements and the Project Land in fee simple, free and clear of all liens and encumbrances, subject only to: liens and encumbrances placed thereon by Developer and real estate taxes and special assessments.

4.3 Related Improvements. Developer may construct related improvements, such as landscaping and streetscaping, and the City Representative will coordinate and cooperate with Developer to accommodate those improvements within the Project schedule.

4.4 Development Assistance. The City will provide development assistance to Developer, as needed, to facilitate and expedite the issuance of building permits and compliance with other City-controlled requirements relating to completion of the Project.

4.5 Access to Site. The City will provide reasonable access to Developer for staging and work areas adjacent to the Project Land. Toward this end, the City will cooperate with Developer to close streets under established City procedure during agreed periods of demolition and construction.

4.6 Certificate and Release. Upon proper application by Developer, the City will issue a certificate and release to Developer in regard to the Gilbert and Mosley groundwater contamination in accordance with the customary process for application and issuance of those certificates.

4.7 Use of Parking Garage. A minimum of 103 parking spaces shall be set aside in the Parking Garage for public parking and the balance for the exclusive use of the residents and guests of Exchange Place Building and Douglas Building. This allocation can be revised by Developer as market experience may demonstrate a need to reallocate parking spaces with consent of the City Representative (which consent shall not be unreasonably withheld or delayed).

Section 5

Insurance, Bonding, and Indemnification

5.1 Types of Coverage. Developer shall carry, or cause the General Contractor to carry, the following insurance coverage insuring Developer, General Contractor, and City through final completion (as defined in the construction contracts):

- (a) Special or builder's "all risk" insurance (including theft, vandalism, boiler, and pressure vessel coverage), in an amount reasonably acceptable to the City representative, insuring Developer's and City's interests in the Project and any and all furniture, equipment, supplies and other property owned, leased, held or possessed by Developer or City in the Project (insurance shall also insure against loss from collapse of any part of the building or other structural failure during construction);
- (b) Comprehensive general liability insurance insuring Developer and City against all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of Developer, City, and their respective agents, contractors, or employees, in connection with the design and construction of the Project, in the amount of not less than Five Hundred Thousand Dollars (\$500,000) or in such other amounts as may be reasonably acceptable to Developer and the City, provided, however, such policies shall not name the City, or insure the City, for an amount of coverage in excess of the City's maximum liability pursuant to the Kansas Tort Claims Act and amendments (and any similar law limiting the liability of the City);
- (c) Workers' compensation insurance;
- (d) Performance and labor and material payment bonds for the General Contractor as required by City Charter Ordinance No. 203;
- (e) Automobile insurance (if applicable) with per occurrence limits of not less than \$500,000; and
- (f) All other insurance as required by law.

5.2 Policy Requirements. The following general requirements shall apply to all insurance coverage carried by Developer and General Contractor pursuant to Section 5.1:

- (a) To the extent available, each policy shall contain a clause whereby the insurer waives all rights of subrogation against General Contractor, Developer, and City, as the case may be;
- (b) Subject to the limitations on general liability insurance in Section 5.1(b), the City shall be named as its interests appear in all policies obtained by Developer and General Contractor;
- (c) Such policies shall be with reputable insurance companies reasonably acceptable to Developer, City, and General Contractor and licensed to do business in Kansas;
- (d) Developer shall provide the City Representative with policies or certificates of insurance evidencing such coverage prior to the start of construction;

- (e) Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be provided by Developer to the City Representative; and
- (f) The policies must be noncancelable unless the carrier provides to the City Representative thirty (30) days' prior written notice of cancellation.

5.3 Indemnification. Developer agrees to indemnify, hold harmless, and defend City and members of the City Council, officers, agents, and employees (collectively referred to as the "**City Indemnified Parties**") from and against all loss, damage, liability, cost or expense including, but not limited to, attorneys' fees and court costs incurred or suffered by or claimed against any of the City Indemnified Parties by any person or entity by reason of injury, death, loss, or damage to any person, property, or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of Developer, its officers, directors, agents, or employees, or the accuracy or incompleteness of information furnished by these persons to the City.

The City's liability for any claims asserted by any person or entity by reason of injury, death, loss, or damage to any person, property, or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of the City, its officers, directors, agents, or employees, shall be governed by the Kansas Tort Claims Act and other applicable laws of the State of Kansas.

Section 6

Term and Survival

The term of this Agreement shall commence upon the date of this Agreement and, unless terminated sooner as provided in this Agreement, shall end on the date that all of the following have occurred: the City Improvement Expenditure and City Parking Garage Expenditure have been contributed to Developer or otherwise paid; the Project is Completed; and the Project is open to the public. However, the following provisions of this Agreement shall survive beyond the end of the term: all representations and warranties; all agreements of indemnification; all obligations of conveyance of title; parking allocations under Section 4.7; tax increment shortfall guaranty in Section 8; limitations on assignment under Section 9.16; and limitations concerning the Cash Basis and Budget Laws.

Section 7

Representations, Warranties, and Guaranties

7.1 City. The City warrants and represents to Developer as follows:

- (a) It is a municipality and political subdivision of the State of Kansas, duly incorporated and validly existing under the laws of the State of Kansas.
- (b) To the best of its knowledge, it has full power and authority to execute this Agreement and consummate the transactions contemplated hereby subject to the limitations expressed herein or otherwise imposed by law.

- (c) Neither the execution and delivery of this Agreement and the other documents contemplated herein nor the making of the City Improvement Expenditure or City Parking Garage Expenditure will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.

7.2 Developer. The Developer warrants and represents to City as follows:

- (a) It is a limited liability company duly organized, validly existing, and in good standing under the laws of Kansas.
- (b) It has the requisite power through Michael Elzufon to execute the documents under this Agreement and to consummate the transactions contemplated thereby.
- (c) Neither the execution and delivery of the documents on its part, nor the making of the Developer Improvement Contribution, nor the construction of the Project will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.
- (d) It is duly authorized and registered to carry on business in Kansas pursuant to the laws of Kansas.
- (e) Before commencement of construction, Developer will have examined the Project Land, the Exchange Place Building and the Biting Building and made all other investigations it deems necessary to perform its duties under this Agreement and satisfy itself that there exists no condition on or about the Project Land or said buildings that would materially hinder or prohibit development of the Project as described in the Development Plan. The warranty under this subparagraph (e) does not restrict Developer's right to cancel this Agreement as provided in Section 9.20.
- (f) All contracts with Contractors shall warrant that the work performed or material supplied by that Contractor to the Project will be free from any defects in materials and workmanship for a period of at least one (1) year from the date of Completion, and that such warranty does not restrict or otherwise limit that Contractor's obligation to construct the Project in a workmanlike manner and in accordance with the Development Plan as it pertains to that Contractor's work.
- (g) It shall use reasonable care to insure that all Specialists and Consultants selected in connection with the design and construction of the Project shall be highly qualified to do the work they are engaged to perform and Developer shall make reasonable inquiries as to such persons' background, experience and reputation to assure they are well qualified to undertake such work.

Section 8

Tax Increment Shortfall Guaranty

Developer agrees to pay the City any annual Tax Increment Shortfall amount for the Exchange Place Project Taxable Properties as provided in this Section 8, but shall not be responsible for such shortfall if there is no Tax Increment Shortfall for the Center City South Redevelopment District, nor for any amount of a Tax Increment Shortfall for the Exchange Place Project Taxable Properties in excess of the amount necessary to eliminate the Tax Increment Shortfall for the Center City South Redevelopment District. Annual Tax Increment Shortfall payments may be paid to the City in two installments, with the first installment equal to one-half the annual Tax Increment Shortfall amount payable within 90 days of receiving written notice and documentation that there is a Tax Increment Shortfall. The balance of the annual Tax Increment Shortfall amount shall be paid within 180 days of receipt of notice.

Developer further agrees to make a good faith effort to meet with the Sedgwick County Appraiser prior to May 1st each year to provide the Appraiser with such detailed financial and operating information on all buildings and condominiums comprising the Exchange Place Project Taxable Properties, as needed to assist the Appraiser in determining the fair market value of said buildings and condominiums.

Section 9

General Provisions

9.1 Governing Law. This Agreement and the legal relations between the Parties shall be governed by, construed and interpreted under the laws of the State of Kansas, and exclusive venue for all disputes and litigation shall be in Wichita, Kansas only.

9.2 No Waiver. No failure of a Party to exercise any power given under this Agreement or to insist upon strict compliance of another Party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms of this Agreement.

9.3 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect.

9.4 Written Amendments. Any amendment to this Agreement shall not be binding on any of the Parties unless the amendment is in writing, is duly authorized, and is duly executed by the Parties to this Agreement.

9.5 Time of Essence. Time is of the essence of this Agreement.

9.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

9.7 Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

9.8 Notices. All notices required to be given under this Agreement shall be delivered in writing and delivered either by (a) hand delivery, and considered delivered upon receipt, (b) telefacsimile, and considered delivered upon completion of transmittal, (c) certified mail, and considered delivered upon signed receipt or refusal to accept notice, or (d) nationally-recognized overnight delivery service, and considered delivered the next business day after the notice is deposited with that service for delivery. For notice purposes, the Parties agree to keep each other informed at all times of their current addresses. For purposes of notices or other written communications, the addresses of the Parties shall be as follows:

(a) If to the City:

City Manager
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
Fax # (316) 268-4519
and

City Clerk
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
and

City Attorney
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
Fax # (316) 268-4335

(b) If to Developer:

Michael Elzufon, Manager
Exchange Place, LLC
2735 Cheshire Lane
Plymouth, MN 55447
Fax # (763) 235-3130
and
Adams Jones Law Firm, P.A.
Attn: Mert Buckley
1635 N. Waterfront Parkway #200
Wichita, KS 67206
Fax # (316) 265-9719

9.9 Nondiscrimination and Equal Economic Opportunity. The Parties covenant and agree that in the performance of their duties and obligations under this Agreement and any other document, instrument, or agreement in connection with the transactions contemplated by this Agreement, neither of the Parties, nor their respective agents, employees, officers, directors, consultants, contractors or subcontractors, will discriminate against any applicant for employment or employee because of race, color, religion, sex, national origin, age, handicapped or disability status, or veterans status. The Parties agree to adhere to the City's standard contracting requirements as they relate to Nondiscrimination and Equal Employment Opportunity as set forth in Exhibit G.

9.10 Severability. If any clause or provision of this Agreement is or becomes invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected by such invalidity or unenforceability, and the remainder of this Agreement shall be enforced to the greatest extent permitted by law.

9.11 Licenses and Permits. It shall be the ultimate responsibility of Developer to secure all local licenses and permits required to be obtained by Developer or City with respect to construction, completion and occupancy of the Project, including any necessary building, occupancy, sewer and utility permits. The City shall cooperate with Developer and all Contractors to the extent permitted by law in connection with the issuance of these licenses and permits.

9.12 Documents. All as-built drawings, plans, specifications, and other documents prepared for the Project pursuant to this Agreement shall become or remain the property of Developer whether or not the Project is Completed.

9.13 Approvals. Whenever the approval or consent of a Party is required in this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

9.14 "Including." Whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the words "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

9.15 Binding Effect. Subject to the limitations of Section 9.16, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

9.16 Assignment. Except as provided herein, no Party may assign all or any part of its interest in this Agreement without the prior written consent of the other Parties, and any such assignment without such consent shall be void. The City may assign all or part of its interest to a city-established entity without approval of the other Parties so long as such assignee has the legal authority to fulfill the City's obligations under this Agreement and, to the extent that it does not have such authority, the assignment shall continue in effect but the City will remain obligated for such nonassignable or unauthorized obligations. Members of the Developer may pledge their membership interests in the Developer entity to the lender holding the primary Loan on the Project if so required by such lender. Developer may transfer membership interests to other parties without the consent of the City; provided however, no such transfer may occur unless Michael Elzufon remains the manager of the Developer and unless Michael Elzufon and David Lundberg retain at least a 25% ownership interest in the Developer, either individually or collectively and either personally or through ownership in an entity that is a member of the Developer.

9.17 Brokerage Commissions. Except as noted below, both parties represent to the other that they have not discussed this Agreement or the subject matter thereof with any real estate broker, agent or salesperson so as to create any legal right in any such broker, agent or salesperson to claim a real estate commission or similar fee with respect to the transactions contemplated by this Agreement. Both Parties hereby indemnify the other Party against and agree to hold the other harmless from any and all claims, suits, or judgments (including, without limitation, court costs and attorneys' fees incurred in connection with any such claims, suits or judgments) for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to the transactions contemplated by this Agreement.

9.18 Cash Basis and Budget Laws. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) (the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"). Therefore, notwithstanding anything to the contrary herein contained, the City's obligations under this Agreement are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law.

9.19 Other Agreements. The Parties also covenant to negotiate and execute such additional documents as may be reasonably necessary to provide for the coordinated construction and operation of the Project.

9.20 Cancellation. In addition to other cancellation provisions under this Agreement, this Agreement may be cancelled by Developer before reimbursement of costs for acquisition of the Project Land if:

- < the improvements to the Project contemplated by this Agreement cannot be made within the Development Budget; or

< Developer is unable to obtain financing and equity sufficient to make the Developer Improvement Contribution.

If Developer cancels this Agreement under the terms of this Section 9.20, then the Parties will pay their own expenses incurred to date, without seeking compensation from each other, and they shall have no further obligations toward each other.

9.21 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

9.22 Force Majeure. If an act of Force Majeure so damages the Project that it cannot be Completed within the Development Budget, then either Party may terminate this Agreement by giving written notice to the other. In that event, the Parties will pay their own respective costs and expenses incurred and thereafter have no further obligation to Complete construction and development of the Project.

CITY:
City of Wichita

DEVELOPER:
Exchange Place, LLC

By: _____
Carl Brewer, Mayor

By: _____
Michael Elzufon, Manager

Attest: _____
Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, City Attorney

EXHIBIT A

Site Plans

EXHIBIT B

Development Budget:

Hud 92013 form

EXHIBIT C

Development Schedule

EXHIBIT D

Development Concept March 24, 2010

The Project consists of two major components: (1) creation of 230 residential units and retail space in the downtown core by renovation of the Exchange Place Building and the Bitting Building and construction of a new Douglas Building and (2) construction of a new 298 stall Parking Garage.

Residential Units and Retail. The Exchange Place Building and the Bitting Buildings are located on the Northeast and Northwest corners of East Douglas and Market. The new Douglas Building will be located east of the Exchange Place Building. They will be converted and constructed into a residential and commercial complex which the Developer will convert and sell as condominiums. Any such sale might include a sale of the Parking Facilities to the condominium owners. Overall, the Project will provide:

- 230 residential apartments; and
- Approximately 16,000 square feet of street level retail space.

The collective apartments for all three buildings will be called Exchange Place apartments. Retail space will be located on the ground floor and serve occupants of the buildings as well as enhancing the availability of services for other workers and residents in the Downtown core area. Construction will begin after closing of the construction loan, and is anticipated to begin in the 3rd quarter of 2010 and be completed in eighteen months with an estimated cost of improvements of not less than \$34,000,000.

Parking Facilities. Developer will construct a multilevel Parking Garage on the 200 block of East Douglas, west of the Kress Building and north / behind the new Douglas Building to contain 298 parking spaces. Additional parking spaces (14) will be located behind (north of) the Exchange Place Building. These two facilities are collectively described as the Parking Facilities and will contain approximately 312 parking spaces. And, because of the automated system in the Parking Garage, can provide parking for approximately 582 residential and retail/office users (see parking study data for details). A minimum of 103 of these spaces will be available for daily and monthly public use. Construction is anticipated to begin in the 3rd quarter of 2010 and be complete in the 2nd quarter of 2011 at an estimated cost of approximately \$8,234,730 which the City will fund up to the amount available under the City Contribution.

Compatible Facing. The Douglas Avenue sides of The Exchange Place Building/ and the Douglas Building will be designed to have compatible facing. The Project's exterior facades have already been reviewed and approved by the City's Historic Preservation Board. Plans will also be submitted for review by the Design Council.



EXHIBIT E

Projected Debt Service Schedule City of Wichita, Kansas – Tax Increment Financing Bonds

City of Wichita, Kansas							
Center City South Redevelopment District							
Exchange Place Project							
Annual Period Ending (1)	Principal (2)	G.O. Taxable Rate (3)	Interest (4)	P&I (5)	Projected Revenue Available (7)	Annual Balance (8)	Cumulative Balance (9)
9/1/2011					50,776	50,776	50,776
9/1/2012	-	5.50%	-	-	80,584	80,584	131,360
9/1/2013	-	5.50%	-	-	222,999	222,999	354,359
9/1/2014	150,000	5.50%	307,556	457,556	462,432	4,876	359,235
9/1/2015	100,000	5.50%	604,934	704,934	832,149	127,215	486,450
9/1/2016	430,000	5.50%	586,621	1,016,621	1,199,238	182,617	669,067
9/1/2017	615,000	5.50%	557,245	1,172,245	1,386,339	214,094	883,161
9/1/2018	665,000	5.50%	521,418	1,186,418	1,402,505	216,087	1,099,248
9/1/2019	720,000	5.50%	483,180	1,203,180	1,418,829	215,649	1,314,897
9/1/2020	775,000	5.50%	442,370	1,217,370	1,435,313	217,943	1,532,840
9/1/2021	830,000	5.50%	398,815	1,228,815	1,451,958	223,143	1,755,982
9/1/2022	890,000	5.50%	352,331	1,242,331	1,468,766	226,435	1,982,418
9/1/2023	955,000	5.50%	302,723	1,257,723	1,485,740	228,017	2,210,434
9/1/2024	1,025,000	5.50%	249,782	1,274,782	1,502,879	228,097	2,438,531
9/1/2025	1,095,000	5.50%	193,285	1,288,285	1,520,187	231,902	2,670,433
9/1/2026	1,170,000	5.50%	132,994	1,302,994	1,537,664	234,670	2,905,103
9/1/2027	1,250,000	5.50%	68,656	1,318,656	1,555,312	236,656	3,141,759
	10,670,000		5,201,910	15,871,910	19,013,669	3,141,759	
Total Project Cost				\$ 9,740,000			
- Note Interest & Finance Costs				\$ 770,000			
- City Project Management Costs (1.5%)				\$ 146,100			
TIF Bond Amount (Rounded up to nearest \$5,000)				\$ 10,660,000			

EXHIBIT F

Legal Descriptions – Project Land (General legal descriptions to be finalized prior to conveyance)

Exchange Place Building

Lot 110 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 112 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 114 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North. **[Developer's seller in process of acquiring remaining fractional ownership interest or 25/48th of Lot 114.]**

Lots 14 and 16, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the West 70 1/10 feet of the North Half of the East and West alley adjoining said Lot 14 on the South.

Lot 18 and the South 0.20 feet of Lot 20, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Bitting Building

East 20½ Feet of Lot 106 and all of Lot 108 on Douglas Avenue, in Greiffenstein's Original Town, Wichita, Sedgwick County, Kansas.

Michigan Building

Lot 116 and the West one Foot of Lot 118, on Douglas Avenue in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Parking Garage Douglas Building-200 block of East Douglas, West of the Kress Building

Lot 118, except the West one Foot and all of Lot 120 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, AND a tract described as follows: Beginning 175 feet East from the Monument on Market Street on the North side of Douglas Avenue, said point being on the West side of alley; thence West 3 feet 1½ inches; thence North 130 Feet to the alley; thence East 3 Feet 1½ inches to alley; thence South 130 Feet to the place of beginning.

Lots 122, 124, and 126 on Douglas Avenue in Greiffenstein's Original Town, Wichita, Sedgwick County, Kansas.

EXHIBIT G

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination --

Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

EXHIBIT H

Legal Descriptions and Common Building Names for Properties in Exchange Place Project Taxable Properties

Exchange Place Building

Lot 110 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 112 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 114 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North. **[Developer's seller in process of acquiring remaining fractional ownership interest or 25/48th of Lot 114.]**

Lots 14 and 16, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the West 70 1/10 feet of the North Half of the East and West alley adjoining said Lot 14 on the South.

Lot 18 and the South 0.20 feet of Lot 20, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Michigan Building

Lot 116 & West 1 Ft Lot 118 on Douglas Avenue in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

Kress Energy Center

Lots 128, 130, 132 on Douglas Avenue in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

Bitting Building

East 20 1/2 Ft of Lot 106, all of Lot 108 on Douglas Avenue in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

Broadway Plaza Building

Common areas & facilities of Broadway Plaza condominium being odd Lots 133-135 on Douglas Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 1, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 2, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 3, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 4, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 5, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 6, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 7, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 8, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 9, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 10, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 11, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Sutton Place Building

Common areas & facilities of Sutton Place condominium situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 1, Sutton Place Condominium & 8.34% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 2, Sutton Place Condominium & 8.34% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 3, Sutton Place Condominium & 8.34% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 4, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 5, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 6, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas

Unit 7, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 8, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 9, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 10, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 11, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 12, Sutton Place Condominium & 8.34% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Petroleum Building

Common areas & facilities of Petroleum Building condominium situated on Lots 28, 30, 32, 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #1, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #2, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #3, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #4, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #5A, Petroleum Building Condominium & 20.86% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #5B, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #6, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #7, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #8, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Kaufman Building

Lots 20, 22, 24 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Workforce Alliance Building

Lots 32, 34, 36, 38, 40, 42, 44, 46 & 48 on Main Street in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

SC Telcom Building

Lots 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 & 35 on Market Street in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

Parking Garage-200 block of East Douglas, West of the Kress Building

Lot 118, except the West one Foot and all of Lot 120 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, AND a tract described as follows: Beginning 175 feet East from the Monument on Market Street on the North side of Douglas Avenue, said point being on the West side of alley; thence West 3 feet 1½ inches; thence North 130 Feet to the alley; thence East 3 Feet 1½ inches to alley; thence South 130 Feet to the place of beginning.

Lots 122, 124, and 126 on Douglas Avenue in Greiffenstein's Original Town, Wichita, Sedgwick County, Kansas.

EXHIBIT I

Certification of Expenditure Form

Request No. _____

Date: _____

Pursuant to Development Agreement between the City of Wichita, Kansas and the undersigned (the "Developer"), the Developer requests payment or reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Redevelopment Agreement.
3. The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the costs for which each obligation requested to be paid hereby was incurred are as set forth on **Attachment I** hereto.
4. These costs have been incurred and are presently due and payable and are reasonable costs that are payable or reimbursable under the Redevelopment Agreement.
5. Each item listed above has not previously been paid or reimbursed and no part thereof has been included in any other Disbursement Request previously filed with the City.
6. Unless otherwise noted to City, there has not been filed with or served upon the Developer any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request.
7. All work for which payment is now or has heretofore been requested (insofar as such payments relate to the construction, remodeling and renovation portions of the Project) has been performed in accordance with the plans and specifications therefore.
8. Lien waivers for costs for which payment is hereby requested which have been received and are attached as **Attachment II** hereto.

Developer

By: _____

Title: _____

Approved this ____ day of _____, 20____.

CITY OF WICHITA

By: _____

City Representative

ATTACHMENT I
to
Certification of Expenditure Form

<u>Name of Payee</u>	<u>Amount</u>	<u>General Classification and Description of Costs</u>
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ATTACHMENT II
to
Certification of Expenditure Form
[Lien Waivers Received]

Name of Payee

Amount to be Paid

Waiver of Lien upon payment through:

**SECOND AMENDMENT
CENTER CITY SOUTH REDEVELOPMENT DISTRICT
FOR EXCHANGE PLACE PROJECT PLAN
April 13, 2010**

THIS Second Amendment to the Center City South Redevelopment District Project Plan is dated April 13, 2010 with respect to the following facts and objectives:

A. The City of Wichita, Kansas adopted a Project Plan (the “Project Plan”) with respect to redevelopment by Lofts at Exchange Place, LLC and Douglas Avenue Parking Garage, LLC (the “Developer”) of certain real property located adjacent to the intersection of Douglas Avenue and Market Street in Wichita, Kansas (the “Project Area”).

B. The Project Plan specifies that the total expenditures eligible for Tax Increment Financing pursuant to State Statute is Six Million Five Hundred Eighty Thousand Dollars (\$6,580,000.00) (the “Eligible Project Costs”).

C. The City amended the Project Plan December 16, 2008 to increase the TIF eligible project costs from Six Million Five Hundred Eighty Thousand Dollars (\$6,580,000) to Ten Million One Hundred Eighty Thousand Dollars (\$10,180,000), acquire additional land, and change the project description from the construction of 91 residential condominiums to 201 residential apartments.

D. The Developer has determined a need for additional parking to accommodate apartment residents and public parking demands. Due to limited space to construct a parking garage, the developer has contracted with a manufacturer of an automatic parking system. The system increases the parking from 229 to 298 (shared parking) spaces, due to efficiencies gained from removing self parking. Costs to construct a parking garage suitable for such system, and the costs of the system itself have made the project no longer feasible with the current approved TIF Eligible Costs.

E. The Developer desires as second amendment to the Project Plan to increase the number of residential apartments from 201 to 230 units, to increase the amount of Eligible Project Costs to include the additional cost to construct the public parking garage, to include the purchase and installation of an automatic parking system and to make other conforming changes to the Project Plan.

NOW, THEREFORE, the Project Plan is hereby amended as follows:

Section 1. The amount of Eligible Project Costs is hereby increased from Ten Million One Hundred Eighty Thousand Dollars (\$10,180,000.00) to Ten Million Six Hundred Seventy Thousand Dollars (\$10,670,000.00). The list of Eligible Project Costs (exclusive of financing costs) is attached hereto as Exhibit B.

Section 2. The Project Description is hereby changed from the construction of 201 apartments to the construction of a total of 230 apartments between the Exchange Place and Bitting Buildings and the parking structure will change from at least 229 spaces to at least 298 shared spaces with the implementation of an automated parking system. A revised Project Description is attached hereto as Exhibit C.

Section 3. The Comprehensive Financial Feasibility Study for the Exchange Place Project is hereby amended by replacing Exhibits II, III and IV with those attached hereto as Exhibits II, III, and IV Second Amendment.

Section 4. All other terms and provisions of the Project Plan shall remain unchanged and in full force and effect.

CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
April 13, 2010

TO: Mayor and City Council

SUBJECT: Public Hearing and Request for Letter of Intent for Health Care Facilities Revenue Bonds (Larksfield Place) (District II)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and approve the Letter of Intent.

Background: On September 11, 2007, City Council approved issuance of Health Care Facility Revenue Bonds, in an amount not-to-exceed \$13 million, to Larksfield Place (“Larksfield”) for the purpose of constructing 27 independent living apartments at their campus located at 7373 East 29th Street North.

Larksfield Place is requesting a six-month letter of intent for issuance of Health Care Facilities Revenue Bonds in an amount not to exceed \$12.8 million. Bond proceeds will be used to finance construction of approximately 90,000 square feet buildings for expanded care facilities located at 2800 North Rock Road on 8 acres of green field space.

Analysis: Larksfield Place is a not-for-profit comprehensive retirement and nursing facility that has operated in Wichita for over 21 years. Larksfield provides retirement care services including independent living, home health care, dementia care and other ancillary services. The current project will complete Larksfield’s continuum of care and will offer assisted living and memory care services. Bond proceeds will finance the construction of a 14,000 square foot commons area with dining and recreation areas and physical therapy services. The expansion also includes an assisted living center with 32 apartments and a memory care center with 32 apartments. The memory care center will also provide dining and activity areas. The expansion will create approximately 76 new positions

As a not-for-profit 501 (c)(3) corporation, Larksfield Place is eligible to receive tax-exempt revenue bond financing. The bonds will be privately placed; and underwriter has not been secured. The City’s bond counsel firm, Kutak Rock LLP, will serve as bond counsel in the transaction.

The project estimates are as follows:

<u>Estimated Sources of Funds</u>	
Bond Proceeds	\$12,800,000
Larksfield Equity	<u>2,700,000</u>
Total Sources	\$15,500,000
<u>Estimated Uses of Funds</u>	
Project Fund	\$14,733,000
Capitalized Interest	285,000
Debt Service Reserve Fund	200,000
Cost of Issuance	189,000
Real Estate Expense	73,000
Miscellaneous	<u>20,000</u>
Total Uses	\$15,500,000

Larksfield Place currently has an approved EEO/AA Plan on file with the City.

Financial Considerations: Larksfield Place agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. Larksfield Place is generally exempt from ad valorem taxes pursuant to Kansas law. Therefore no tax exemption is requested in conjunction with issuance of Health Care Facilities Revenue Bonds.

Goal Impact: Economic Vitality and Affordable Living. The Economic Vitality of the community is being enhanced with the continuum of healthcare in Wichita.

Legal Considerations: Bond documents needed for the issuance of the bonds will be prepared by bond counsel. The City's Law Department will review and approve the final form of bond documents prior to the issuance of any bonds. The public hearing held in conjunction with this item is in compliance with the Tax Equity and Fiscal Responsibility Act ("TEFRA") hearing requirement in the federal tax code for tax-exempt bonds.

Recommendations/Actions: It is recommended that City Council close the public hearing and approve a Letter of Intent for Health Care Facilities Revenue Bonds to Larksfield Place, in an amount not-to-exceed \$12,800,000, subject to the Letter of Intent Conditions, and authorize the necessary signatures.

Attachments: Letter of Intent Application



LARKSFIELD

• P L A C E •

a community for living

March 17, 2010

Mayor Carl Brewer and
Members of the City Council
City of Wichita
City Hall – 455 N. Main
Wichita, KS 67202

Re: Proposed City of Wichita, Kansas
Health Care Facilities Revenue Bonds (Larksfield Place)

Dear Mayor Brewer and Members of the Council:

In accordance with the procedures and policies established by the City's governing body, this is to request approval by the City Council of a Letter of Intent to issue Health Care Facilities Revenue Bonds in an amount not to exceed \$12,800,000. The following information is submitted in support of such request:

1. **Name and Address**

Larksfield Place Retirement Communities, Inc. ("Larksfield Place")
7373 East 29th Street North
Wichita, KS 67226

2. **Name and Address of Principal Officers and Directors**

Valerie McGhee
President and C.E.O.
7373 East 29th Street North
Wichita, KS 67226

Tim Nikkel
Chief Financial Officer
7373 East 29th Street North
Wichita, KS 67226

A list of current Directors of Larksfield Place is attached as Exhibit A.

3. **General Description of the Nature of Business**

Larksfield Place is a Kansas Not-for-Profit corporation operating as a "continuing care retirement community." Larksfield Place was organized to construct and operate Health Care Retirement and Nursing Facilities as described in greater detail below.

Competition

Larksfield Place is located in the northeastern quadrant of the City and has operated for over 21 years. Within this area, there are facilities which provide some nursing services and assisted living services, but only one other facility, Catholic Care Center, which offers retirement services similar to Larksfield Place. However, Catholic Care Center is denominational while Larksfield Place is not; moreover, Larksfield Place believes its retirement care services, including independent living, home health care, skilled nursing including dementia care, wellness training, educational activities, other ancillary services, and quality of life are unmatched by other facilities.

4. General Description of the Proposed Project and Improvements

The Project is intended to complete Larksfield Place's continuum of care, which currently does not offer an assisted living or memory care option. Proceeds from the bond issue will be utilized to fund construction of approximately 90,000 square feet of buildings as follows:

- (a) One two-story commons building with approximately 14,000 square feet including dining, recreational, fitness, and activities areas, as well as medical examination rooms and physical therapy areas;
- (b) One two-story assisted living center with eight 2-bedroom apartments and twenty-four 1-bedroom apartments with approximately 54,850 square feet;
- (c) One single-story memory care center with thirty-two 1-bedroom suites and common areas for dining and activities with approximately 21,150 square feet.

5. Specific Location of the Proposed Project

The Project will be located on 8 acres of land at approximately 2800 North Rock Road, at the intersection of Greenbriar, in the city of Wichita, Kansas.

6. Benefits of the Project

Issuance of the proposed Bonds will be used to expand the services offered at Larksfield Place that will enhance the care provided to and increase the number of residents served. There

are no comparable assisted living or memory care units in Larksfield Place's market area. Completion of the project will create approximately 76 full-time equivalent jobs.

7. The Dollar Amount of the Bonds Requested

The principal amount of the Bonds being requested is an amount not to exceed \$12,800,000.

8. Proposed Use of Bond Proceeds

It is anticipated that the proceeds from the sale of the proposed Bonds, together with other monies to be provided by Larksfield, will be applied substantially as follows:

Not to Exceed Estimates:

Bond Proceeds	\$12,800,000
Larksfield Equity	\$ 2,700,000
Total Sources	<u>\$15,500,000</u>
Project Fund	\$14,733,000
Capitalized Interest	\$ 285,000
Debt Service Reserve Fund	\$ 200,000
Cost of Issuance	\$ 189,000
Real-Estate Expense	\$ 73,000
Miscellaneous	\$ 20,000
Total Uses	<u>\$15,500,000</u>

9. Underwriting Agreement

There is no underwriter for the Bonds. The Bonds are to be privately placed.

10. Bond Counsel Services

Larksfield Place will agree to pay for the services of bond counsel to be selected by the City, and in addition, Larksfield Place will agree to pay all costs incurred by the City relating to the issuance of the Bonds regardless of whether the Bonds are ultimately approved or issued.

11. Ad Valorem Taxes

Larksfield Place is a not-for-profit corporation operating an adult care home and providing housing for elderly persons, and as such is generally exempt from ad valorem taxes pursuant to Kansas law. Therefore, no ad valorem tax abatement is being requested in connection with the Bonds.

12. Administrative Fees of the City

Larksfield Place will agree to make payments of the City's administrative fees each year for the life of the bonds, and in addition, Larksfield Place will agree to pay all costs incurred by the City relating to the issuance of the Bonds regardless of whether the Bonds are ultimately approved or issued.

13. The Effects of the Proposed Project on the Ambient Air Quality of the City of Wichita and Sedgwick County

The proposed Project will have no significant adverse effect on the ambient air quality of the City of Wichita or Sedgwick County

14. Name and Address of Bond Counsel

Kutak Rock, LLP
1010 Grand Blvd., Suite 500
Kansas City, MO 64106
Attention: Dorothea Riley
(816) 960-0090

15. Name and Address of Larksfield Place Special Counsel

Gilmore & Bell, P.C.
2405 Grand Blvd. Suite 1100
Kansas City, MO 64108
Attention: James W. Winn
(816) 221-1000

16. Name and Address of General Counsel for Larksfield Place

Martin & Churchill, Chartered
8415 East 21st Street North, Suite 210
Wichita, KS 67206
Attention: W. Stanley Churchill
(316) 263-3200

17. Name and Address of Bank Participant

UMB Bank, N.A.
130 N. Market St.
Wichita, KS 67202
Attention: Randy Summers
(316) 266-6011

18. Equal Employment Opportunity

Larksfield Place agrees to comply with applicable policies of the City of Wichita with respect to equal employment opportunity and to submit for approval an Equal Employment/Affirmative Action Plan.

19. Financial Information

Larksfield Place's audit reports for the most recent year are attached as Exhibit B.

20. Environmental Site Assessment

The project does not involve the acquisition of any additional interest in property. Larksfield Place previously furnished the City with an environmental site assessment in conjunction with the 1994 Bonds.

21. Selection of Trustee

Larksfield Place agrees that so long as the Bonds remain outstanding, it will not have a commercial banking relationship with the Trustee designated pursuant to the Indenture, unless the Bonds are privately placed.
(Note: These bonds will be privately placed.)

So that Larksfield Place may finalize arrangements with the respect to the Project, it is requested that the City Council authorize the Mayor to execute a Letter of Intent, for and on behalf of the City, whereby the City will indicate its intent to issue its Private Placement Bank Qualified Health Care Facility Revenue Bonds for the purposes described herein.

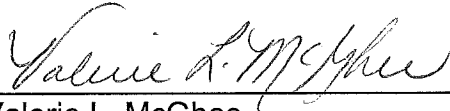
Larksfield Place is aware that such Letter of Intent is only an indication of the City's intent to issue the Bonds to assist in financing the proposed Project, and that issuance of the Bonds remains subject to final agreement on the terms and conditions of the Bond Ordinance, Trust Indenture, Lease Agreement, Guaranty

Agreement, and related documents. However, upon issuance of such Letter of Intent, Larksfield Place is prepared to proceed in reliance thereon.

If further information is necessary for consideration of this request for approval of the Letter of Intent, please contact the undersigned.

Respectfully submitted,

LARKSFIELD PLACE RETIREMENT COMMUNITIES, INC.

A handwritten signature in cursive script, reading "Valerie L. McGhee", is positioned above a horizontal line.

Valerie L. McGhee
President and Chief Executive Officer

EXHIBIT A

BOARD OF DIRECTORS – 2009-2010

Tammy J. Allen

Michael Boyd

Robert L. Burgess (Chairman of Marketing Committee)

Robert Dool

Charles F. Grier (Chairman of the Planning Committee)

Willis E. (Wink) Hartman

Jim B. Hattan

Janet L. Murfin (Chairman of Health Care Center Committee)

Mary Lynn Oliver

Richard H. Price, Jr., J.D. (Chairman of the Board and Executive Committee)

Teresa S. Radebaugh, Sc.D.

Steven D. Regier, CPA (Chairman of the Finance Committee)

James J. Rhatigan, Ph.D.

Hale D. Ritchie, Jr.

Joaquin G. Santos, Jr., M.D.

Larry D. VanHorn, CPA

Brian A. Wilkinson, CPA

Roger W. Zellers (Chairman of the Nominating Committee)

**City of Wichita
City Council Meeting
April 13, 2010**

TO: Mayor and City Council

SUBJECT: Request for Qualifications –
ILWS/ASR Program Review/Interim Water Utilities Director

INITIATED BY: Water Utilities Department

AGENDA: New Business

Recommendation: Approve the Agreement with HDR Engineering, Inc. for ILWS/ASR Program Review.

Background: On Thursday, March 11, 2010, the City Manager announced concerns about the financing of the Aquifer Storage and Recovery (ASR) Program. While these concerns were attributed to several independent events, one of the underlying issues was the long-term cost of the ASR Program. Of immediate concern was the project financing and the utility rate structure necessary to cover this and other operational concerns.

On March 12, 2010, the City requested formal statements of qualifications from consultants that would be interested in assisting the City with a thorough review of the ASR program including: a review of future water demands versus availability; identification of water supply options (including the ASR approach); the cost of the ASR program and other water supply alternatives; and financing options and impacts on rate structure. In addition, the consultants were asked to submit a proposal to furnish an Interim Director for the Utility to serve until a new Director could be found.

It should be noted that in the RFQ process, consultants are asked to submit proposals emphasizing their qualifications to perform the work. Typically, they are asked to address issues such as experience on similar projects, project team, project approach, and schedule. Fee is typically not considered until a selection is made based on qualifications.

Analysis: The deadline for submission of proposals was 3:00 p.m. on March 26, 2010. The City received four (4) proposals, three of which were considered by a Selection Committee, which consisted of the following individuals:

Mr. Robert Layton, City Manager
Mr. Richard LaMunyon, City Administrator, Maize, KS
Mr. Chris Carrier, Public Works Director
Mrs. Kelly Carpenter, Finance Director
Mr. Joe Lang, Law Department
Mr. John Schlegel, Planning Director

Mr. Jim Armour, City Engineer
Mrs. Deb Ary, Supt. of Production and Pumping

The proposals considered by the Committee were: HDR Engineering, Inc., Kansas City; MWH, Wichita, KS; and Shaw Environmental and Infrastructure, Inc., Wichita, KS. A proposal submitted by Raftelis Financial Consultants, Inc., Kansas City was for financial consulting only and was not considered responsive.

On March 31, 2010, the Selection Committee met, reviewed the proposals, and jointly ranked the submittals. The firm of HDR Engineering, Inc. was ranked first. Based on this outcome, the Committee requested that HDR Engineering, Inc. appear for a formal interview, which was held on April 2, 2010. Based on the results of this interview, the Selection Committee felt that HDR Engineering, Inc., had the strongest team with the most experience and the best approach to the project that would result in the most comprehensive ASR project review in the short time allowed (30 days).

During the proposal review process, it was also determined that the qualifications of the Interim Director's proposed were comparable to existing City staff and offered no particular advantage to selecting a consultant for this assignment.

Financial Considerations: A proposed Agreement between the City and HDR Engineering, Inc. is attached. It is a not-to-exceed contract in the amount of \$185,000. The cost of this contract will be paid from ASR project funds.

Goal Impact: This project will ensure efficient infrastructure by providing reliable sewer service and ensuring that the City's effluent continues to meet quality standards.

Legal Considerations: The Law Department has reviewed the proposed Agreement and approved it to form.

Recommendation/Action: It is recommended that the City Council approve the Project; approve the Agreement; authorize the necessary signatures.

Attachment: Proposed Agreement –City and HDR Engineering, Inc.

CC:sab

AGREEMENT
for
PROFESSIONAL SERVICES

PROFESSIONAL SERVICES AGREEMENT

CITY OF WICHITA

ASR PROGRAM REVIEW

APRIL 13, 2010

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AGREEMENT

THIS AGREEMENT, with an effective date of the 13th day of April, 2010, is made and entered into between the CITY OF WICHITA, KANSAS, a municipal corporation, acting by and through the Wichita Water Utilities (hereinafter called the "City"), and HDR Engineering, Inc., a corporation with a principal place of business at 4435 Main Street, Suite 1000, Kansas City, MO 64111-1858 (hereinafter called the "Consultant"). (City and Consultant may be collectively referred to herein as "Parties", or individually as "Party".)

Recitals

WHEREAS, the City has developed an Integrated Local Water Supply (ILWS) Plan to meet the City's water supply requirements through the year 2050. This Plan consists of a portfolio of projects and components to be constructed in phases over a 10-year period that must be coordinated in order to meet the Plan's water supply goals.

WHEREAS, the City desires to obtain a Consultant to perform a Review of the ASR Program to assist the City in planning to meet future water demands through 2050.

WHEREAS, Consultant represents that its members include duly-licensed engineer(s) of the State of Kansas, as applicable, and that it has the present capacity, is experienced and qualified to perform professional services for the City in connection with the review of the ASR Program as specified in this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants and obligations set forth herein, the parties mutually agree as follows:

Section I - Preliminary Matters

- A. Consultant's professional services shall consist of a Scope of Work, ***Attachment 1***, attached hereto and incorporated into this Agreement, that details how the Consultant would proceed with the ASR Program Review, from the format in the Qualification and presentation material provided by Consultant as part of its proposal and any other services included in this Agreement except that any reference to standard of care shall be replaced by that set forth in this Agreement, including value engineering and professional services, unless superseded by Supplemental Agreement pursuant to **Section VI.C.** of this Agreement. Other exhibits or attachments may be attached to and made a part of this Agreement, some of which may be in conflict with other attachments, exhibits or portions of this Agreement. In the event of any conflict in any of these attachments, exhibits or portions of this Agreement, the intent of the parties is to resolve such conflict in favor of the provision which provides for the greatest detail.
- B. If the Parties to this Agreement have previously entered into a Professional Services Agreement for professional services for any work related to the Program, then notwithstanding any provisions in

that agreement to the contrary, all work performed by Consultant for the ASR Program Review under this Agreement shall be performed in accordance with the standards, terms, conditions and requirements of this Agreement.

- C. In performing professional services pursuant to this Agreement, Consultant acknowledges that time is of the essence for Program delivery. All services to be performed under this Agreement shall be commenced immediately upon execution of this Agreement by the parties hereto and approval by the City, as required by applicable law, in accordance with the Milestone Schedule set forth in ***Attachment 2***, attached hereto and incorporated into this Agreement.
- D. The total compensation to be paid Consultant under this Agreement is stated in **Section VI** of this Agreement, which amount is intended to cover the entire cost of the professional services contemplated by this Agreement. The Consultant agrees to cooperate fully with the City during the ASR Program Review to keep compensation within this limit. The City shall pay Consultant in accordance with the terms of this Agreement as reflected in the Fee Schedule set forth in ***Attachment 3***, attached hereto and incorporated into this Agreement.

Section II - Authority

- A. The City's Project manager for the ASR Program Review is Chris Carrier, Interim Wichita Water Utilities Director. The Project manager is responsible for authorizing and approving all work performed under this Agreement. All communications related to the ASR Program Review shall be with the City's Project Manager and, in his absence, a person to be designated by him.
- B. Donald Lindeman, P.E. ("Consultant Representative") is Consultant's representative for the ASR Program Review. Consultant Representative shall have sufficient authority to represent and bind Consultant in those instances when such authority is necessary to carry out Consultant's responsibilities and obligations under the terms of this Agreement.

Section III - Basic Services and Responsibilities

- A. Consultant agrees to perform all of the professional services set forth below and described in ***Attachment 1*** and/or the proposal provided by Consultant as part of its Qualification submittal.
- B. Consultant hereby represents to the City that Consultant is financially solvent and possesses sufficient experience, licenses (including required state licenses as applicable), authority, personnel and working capital to complete the services required hereunder.
- C. Consultant hereby represents to the City that Consultant has reviewed the ASR Program and has familiarized itself with the conditions under which the required services are to be provided; that it has properly investigated and considered all conditions and obstacles in their qualification submitted which may affect its services; and that Consultant will correlate its observations of the ASR Program and all of the provisions of this Agreement. Accordingly, the parties agree that Consultant will not be granted any additional compensation based upon the lack of information or its effects on the cost of work.

- D. The professional services provided under this Agreement for the ASR Program Review shall be of a quality commensurate with that provided by specialized design professionals for projects of similar size, complexity, and difficulty, and shall be adequate and sufficient. All reports, drawings and specifications, as applicable, for the ASR Program Review, when submitted by Consultant to the City, must represent a thorough study and competent solution for the ASR Program Review and shall reflect appropriate and necessary value engineering and professional services applicable. Consultant shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all designs, plans, reports, specifications, drawings, schedules, cost estimates and other services rendered by Consultant.
- E. Consultant represents to the City that its and all of its subconsultant's services shall be performed in a skillful and competent manner, exercising due and reasonable professional care, and shall comply with the recognized standards of a nationally recognized consulting firm and the standards and practices in this Agreement. The Consultant shall be responsible to the City for all costs and damages resulting from (i) defects in design that don't meet the standard of professional care, (ii) non-workability of design details, (iii) failure to comply with the terms of this Agreement, and (iv) negligent acts, errors or omissions. Consultant and its consultants, subcontractors, agents, employees and officers shall promptly upon notice or discovery, make necessary revisions or corrections of errors, ambiguities, or omissions in the drawings and specifications without additional compensation.
- F. The City shall have the right to disapprove any portion of Consultant's work including, but not limited to, work associated with the design and construction documents, pre-bid and bidding phases, and any other design work or documents, which does not reasonably comply with the requirements of this Agreement. In the event that Consultant's work or a portion thereof is not approved by the City, Consultant shall proceed, when requested by the City, with revisions to the design work or documents prepared for that work and meet all applicable requirements of this Agreement. If said additional work complies with the requirements of this Agreement, the City will provide prompt written approval. Correction or completion of work which does not comply with the requirements of this Agreement shall be made without adjustments to the compensation for Consultant's services provided for hereunder unless the revisions are made to work previously approved for previous tasks, in which case, Consultant's compensation shall be adjusted. It is the intent of the parties that Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, services or other work, without additional cost to the City. The acceptance of Consultant's services by the City shall not relieve Consultant from the obligation to correct subsequently discovered defects, inaccuracies or incompleteness resulting from Consultant's negligent acts, errors or omissions.
- G. Consultant shall obtain written authorization from the City before proceeding with each major task for the ASR Program Review.
- H. Consultant shall consult with the City as necessary on all matters connected with carrying out and performing the services required under this Agreement.

- I. Consultant agrees to conduct the ASR Program Review within the general intent of the program and established budget. Should the Consultant determine that the ASR Program Review cannot be conducted within the established budget, Consultant shall immediately notify the City, in writing, so that the scope and/or budget can be reviewed and modified as necessary, including any changes in Consultant's scope, compensation and schedule.
- J. Consultant agrees to conform to and be bound by written standards, criteria, budgetary considerations and policies previously furnished by the City.
- K. All drawings and specifications shall be prepared so that, when constructed in accordance with such drawings and specifications, the project complies with all applicable laws, statutes, codes, ordinances, executive orders, and rules and regulations of the City, County, the State of Kansas, and the United States Government in effect when the construction documents are sealed. Consultant represents to City that the construction documents and any other documents prepared by or through Consultant under the terms and conditions of this Agreement shall meet the applicable standard of care and be prepared in accordance with the existing applicable laws, statutes, codes, ordinances, rules and regulations, including without limitation, those dealing with land use or water rights, use, zoning, building, fire, safety and environmental laws, codes and ordinances of the city, county, state and/or federal agencies or any other governmental or quasi-governmental entity having jurisdiction in effect at the time that the work is performed ("Code Requirements"); subject only to (i) all approved variances therefrom, and (ii) written agency interpretations thereof when based upon inquiry by Consultant to the agencies charged with the enforcement of such laws, statutes, codes, ordinances, rules and regulations.
- L. Consultant shall prepare plans and specifications in a format that complies with all City requirements as well as all applicable county, state and federal requirements. Consultant shall be responsible for contacting the appropriate agencies and to determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though federal, state and county agencies may have approved such documents.
- M. Coordination with the City, other regulatory agencies, or Consultants of other ASR Program Projects shall be a continuing work item, continuing through the completion of Consultant's work as described in **Attachment 1** to the completion of the Program. Such coordination shall consist of regular progress and review meetings with the Contractor, City, Consultants of other ASR Program Projects, work sessions with the City's staff and the user agencies or as otherwise directed, and coordination with utility companies. Such coordination shall also include field and office reviews of plans and documents during development, as required in this Agreement. Consultant shall document all such meetings and work sessions and distribute notes of such meetings and work sessions to the City and others, as appropriate.
- N. Consultant shall, upon the request of the City, be represented at all Design/Programming meetings or hearings which involve or impact the ASR Program Review.

- O. Consultant shall complete a Final Report and, following its completion, Consultant shall assist the City in determining the best course of action to take to complete implementation of selected subparts of the ASR Program Review. The course of action may include a design-bid-build or alternate delivery. City reserves the right to structure the implementation in any such manner at its sole discretion.
- P. The responsibilities and obligations of Consultant under this Agreement are not to be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, City's Representative or employee of the City.
- Q. Consultant shall submit billings to the City for the services performed as required by this Agreement. During the progress of work covered by the Agreement, partial payments may be made to the Consultant at intervals of four weeks or greater time span.
- R. Consultant shall complete and deliver preliminary and final planning documents to the City within the time allotted for the work as stipulated in ***Attachment 2*** or as it is amended.
- S. Consultant represents that the statements of fact made in the proposal it submitted with its bid to perform professional services associated with the ASR Program Review are true and accurate and that the City reasonably relied upon such representations.

Section IV – Subconsultants

- A. These services shall be diligently performed by Consultant's regular professional and technical staff. In the event Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with the City approval, by practicing professional subconsultants outside of Consultant's regular employment.
- B. Prior to designating an outside professional to perform work or services under this Agreement, Consultant shall submit the name(s) of such professional, together with a resume of training and experience in work of like character and magnitude, to the City and receive prior written approval. The City shall have the right to reject any proposed subconsultant for reasonable cause. "Subconsultant" shall mean any person or business entity which is not an employee of Consultant.
- C. A subconsultant's services, performed under this Agreement, are considered the services of the Consultant. Delegation of services shall not be construed to create any contractual relationship between the City and such subcontractor. All design documents, contract documents, and other documents prepared and issued by subconsultant(s) are documents of the Consultant for the purposes of this Agreement. Consultant's delegation to subconsultant(s) of some of Consultant's services does not relieve Consultant of any liability for full, workmanlike and proper performance of the delegated service and for any liability for representations made in connection with or arising from performance of the services. All representations made in this Agreement extend to and apply to subconsultant's services.
- D. The City's communications with Consultant's subconsultants shall be through Consultant.

Section V - Schedule

- A. Consultant shall submit to the City, in writing, a Milestone Schedule setting out the milestone dates on which the Consultant plans to complete its work under this Agreement. The milestone schedule shall include, but not be limited to, all dates by which any known actions, decisions or information required from the City must be provided in order for Consultant to perform according to the schedule. The milestone schedule shall, when reviewed by the City, be incorporated herein by reference as **Attachment 2** or as it is amended. Consultant shall provide weekly schedule updates to the City in a mutually agreeable electronic format.
- B. Consultant shall make every reasonable effort to meet the Milestone Schedule. Meeting the deadlines contained in this Schedule shall not result in a higher professional cost to the City nor shall quality of design be compromised to achieve these dates.
- C. The parties agree that in performing the terms, conditions and requirements of this Agreement by Consultant, time is of the essence. Consultant shall perform diligently and uninterruptedly and shall complete its work within the time schedule set forth herein.

Section VI - Compensation

- A. Payment to the Consultant for the performance of its services shall be as defined in **Attachment 3** and shall not exceed the sum of one hundred eighty five thousand dollars (\$185,000), which payment shall be in accordance **Attachment 3**. It is understood and agreed by and between the Parties hereto, that the City shall pay Consultant for services furnished, and Consultant shall accept as full payment for such services, amounts of money computed in this Section.
- B. It is the Parties' intent that all professional services required for the construction of the ASR Program Review are to be provided by Consultant as part of its services as identified in **Section III** of this Agreement. The City's failure to list a specific service that would normally be provided shall not be cause to eliminate that service.
- C. In the event that either party desires to change the scope of the services for any reason which is not within the scope of the services as identified in **Section III** of this Agreement, such party shall submit to the other party a request for a Supplemental Agreement. Consultant will then submit a projection of the cost of the requested Supplement Agreement. Consultant's compensation under any Supplemental Agreement shall be as defined in **Attachment 3**. Any Supplemental Agreement shall be in writing and signed by representative of both parties. Neither party shall unreasonably disapprove a request for Supplemental Agreement. However, no additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement.
- D. Design changes required by (i) changes in applicable laws, statutes, codes, ordinances or rules and regulations of the City, Local, State, or Federal governmental agencies after the City's acceptance of construction documents or (ii) unreasonable extension, by no fault of Consultant, of the Milestone Schedule beyond the dates in **Attachment 2**, as amended from time to time, shall be compensated for pursuant to **Section VI.C.** of this Agreement. However, nothing in this paragraph shall be construed as granting Consultant the right to any additional compensation based upon lack information concerning the ASR Program Review, as described in **Section III.C.** or its effects on the cost of work.
- E. Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any work beyond what has been specifically authorized in writing by the City.
- F. In the event that any part of the ASR Program Review is deleted or otherwise not designed or performed, compensation to Consultant for the ASR Program Review shall be payable only to the extent services are actually performed on said work, or portions of said work, in accordance with Consultant's approved payment schedule.
- G. Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and, provided that Consultant is timely paid amounts due from the City under this Agreement, shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities, funds or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations. If the City, in its sole discretion, reasonably requires lien and/or

verified claim releases in a form satisfactory to City and executed by Consultant and its subconsultants, they shall be submitted with Consultant's monthly invoices to the City.

- H. Consultant shall maintain current, accurate and complete records of all man hours expended and expenditures made by it in connection with the ASR Program Review. In accordance with **Section VII** of this Agreement, all such records shall be available for review by the City at all reasonable times upon written request by the City to Consultant.
- I. The final payment to Consultant shall not be made until after the ASR Program Review is accepted by the City and this Agreement is otherwise fully performed by Consultant.
- J. The City shall not be obligated to make any payment (whether an interim payment or Final Payment) to Consultant hereunder if any one or more of the following conditions exist:
 - (i) Consultant is in default of any of its obligations hereunder or under any provision of this Agreement.
 - (ii) Consultant has failed to make payments promptly to subconsultants or other third parties in accordance with the terms of its respective subconsultant agreements after the City has made payments to Consultant.
- K. No interim payment or other partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the services to which such interim payment or other partial payment relates, nor shall it relieve Consultant of any of its obligations hereunder with respect thereto.

Section VII - Examination of Records

- A. Consultant agrees to make available during regular business hours all of its and its subconsultant's calculations, sketches and drawings concerning the ASR Program Review such as the City may wish to examine during performance of the Agreement.
- B. Consultant agrees to maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by Consultant and, where relevant to method of payment, to make such material available at its office at reasonable times during the contract period, and for three (3) years from the date of final payment under the contract for inspection by the City or its authorized representatives.
- C. Consultant agrees to include in first-tier subcontracts under this Agreement a clause to the effect that the City, acting through its duly authorized designee, shall, until 3 years after final payment under the subcontract, have access to and the right to examine and any of the subcontractor's directly pertinent documents, including but not limited to, books, invoices, timesheets, papers, or other records involving transactions related to the subcontract.

- D. The periods of access and examination as noted above for records relating to (i) litigation or settlement of claims arising from the performance of this Agreement, or (ii) costs and expenses of this Agreement to which the City, acting through its duly authorized designee, has taken exception, shall continue until such appeals, litigation, claims, or exceptions are finally resolved.

Section VIII – Assignments/Parties to Agreement

- A. The list of ASR Program Review team members and key personnel, essential to the successful completion of the ASR Program Review and authorized to perform work under this Agreement are in ***Attachment 4***. The list may only be amended during performance of this Agreement by written notice to the City's Project Manager and approval.
- B. Notwithstanding any other provision in this Agreement, it is the intent of the parties that all key personnel be engaged to perform their specialty for all such services required by this Agreement, and that Consultant's key personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- C. Neither Consultant, nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on the ASR Program Review, and Consultant shall make written inquiry of all of its subconsultants concerning the existence of or potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.
- D. The City is not obligated or liable under this Agreement to any party other than the Consultant named herein. Consultant understands and agrees that this is a Professional Services Agreement and it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting.
- E. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

Section IX - Ownership of Documents

- A. All deliverables, as described in ***Attachment 1***, prepared by Consultant under this Agreement when delivered to and accepted by the City, shall become the property of the City when Consultant has been compensated by the City under the terms of this Agreement. Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder as more fully described in ***Attachment 1***.

- B. The City shall have unlimited rights in the ownership of all deliverables, as described in ***Attachment 1***, including the right to use the same on any other City project(s) without additional cost to the City, and with respect thereto the Consultant agrees to and does hereby grant to the City a non-exclusive royalty-free license to all data which Consultant may cover by copyright and to the deliverables to which Consultant may assert any rights or establish any claim under the patent or copyright laws or any other applicable laws.
- C. Consultant shall have common law, statutory and other reserved rights in the drawings, specifications and other documents, including those in electronic form, prepared by Consultant for use with respect to this ASR Program Review. However, Consultant gives the City an irrevocable license to use the drawings, specifications, and other documents prepared by Consultant for completion of this ASR Program Review. This license is for the benefit of the City and its assigns and permits the City to retain other architects, engineers and design professionals who may use the drawings, specifications and other documents for such purposes.
- All drawings, specifications and other documents shall become the property of the City, at the conclusion of the ASR Program Review, whether the ASR Program Review for which they are made is executed or not, or the termination of the services of Consultant, whichever is earlier, and shall be delivered to the City clearly marked and identified in good order. Such documents may be used by the City to construct one or more like projects without the approval of, or additional compensation to, Consultant. Consultant shall not be liable for injury or damage resulting from reuse of drawings, specifications and other documents for a project in which Consultant is not also involved, the City will remove and obliterate from such documents all identification of the original Consultant, including name, address, professional seal and stamp.
- D. The deliverables, as described in ***Attachment 1***, excluding Consultant's standard details and documents, shall not be used by Consultant on or for other projects without the written approval of the City, which shall not be unreasonably withheld.
- E. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the ASR Program Review is not to be construed as publication in derogation of Consultant's or the City's rights.

Section X - Taxes and Licenses

- A. Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work and services which it performs under this Agreement and shall take out and keep current all required municipal, City, state or federal licenses required to perform its services under this Agreement. Consultant shall furnish the Project Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes.

Section XI - The City's Responsibilities

- A. The City shall:

- (i) Use reasonable efforts to furnish all available information and data pertaining to the ASR Program Review now in the City's possession.
 - (ii) Pay the Consultant for its services in accordance with the requirements of this agreement.
 - (iii) Provide right of entry for Consultant's personnel in performing the services hereunder.
- B. Actions taken by the City under this Section shall not, in any way, relieve Consultant of its responsibilities for design deficiencies, errors or omissions.
- C. The City shall not be liable for the payment of taxes, late charges, or penalties of any nature incurred by Consultant in performing its services under this Agreement.
- D. The accuracy of information and data the City provides to Consultant, pertaining to the ASR Program Review for purposes of this ASR Program Review, the Consultant may assume that the City data is accurate.

Section XII - Laws and Ordinances

- A. Consultant, at all times, agrees and shall observe and comply with all federal, state and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1974, and to comply with the City's Non-Discrimination and Equal Employment/Affirmative Action Program as set forth in **Attachment 5** which is attached hereto and adopted by reference as though fully set forth herein.

Section XIII - Status of Consultant

- A. It is understood and agreed that the status of Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as it is not intended, nor shall it be construed, that Consultant, or any member of its staff or any consultant or subconsultant, is an employee, officer or agent of the City for any purpose whatsoever.

Section XIV - Termination of Agreement

- A. The City may terminate this Agreement in whole or in part, at any time, upon written notice, with or without cause, at its sole discretion; provided, however, that in any case the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions in **Section III** of this Agreement and **Attachment 3**, but in no case shall payment be more than the Consultant's actual costs plus a reasonable sum for profit.
- B. After receipt of written notification that this Agreement has been terminated under this Section, Consultant shall incur no further costs other than reasonable termination costs associated with current activities.

- C. In the event of termination, all finished and unfinished ASR Program Review deliverables prepared by Consultant pursuant to this Agreement shall become the sole property of the City, subject to the provisions of **Section IX** of this Agreement.
- D. Termination shall not relieve Consultant from liability to the City for damages sustained as the result of Consultant's breach of this Agreement; and the City may withhold funds otherwise due under this Agreement until such time as the exact amount of damages, if any, has been determined.

Section XV - Insurance Requirements

- A. During the Program, Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.
- B. Consultant shall procure and maintain as the insurance coverage:
 - (i) Professional Liability Insurance to insure the adequate performance of all professional activities under this Agreement in an amount of \$1,000,000.
 - (ii) Workman's Compensation and Employer's Liability Insurance in an amount of: Workman's Compensation – Statutory, and Employer's Liability - \$100,000.00 each occurrence.

This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law.

This policy shall be procured and maintained by the Consultant, shall be written in a comprehensive form and shall protect Consultant against all claims arising from injuries to persons (other than Consultant's employees) or damage to property of the City or others arising out of any negligent act or omission of Consultant, its agents, officers, employees, subconsultants or subcontractors in the performance of Consultant's services under this Agreement. It shall include Premises — Operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability coverages.

- C. Every such policy shall be procured and maintained with appropriate forms and insurers acceptable to the City. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to **Section XVI**, of this Agreement. The City shall be added as an additional named insured on every such policy with the exception of Workers Compensation and Professional Liability insurance. All coverage shall be

continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Consultant shall be solely responsible for any deductible losses under any required policy.

- D. Every policy, except professional liability insurance, required above shall be primary insurance, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by this paragraph shall contain any exclusion for bodily injury or property damage arising from completed operations.
- E. Satisfactory Certificates of Insurance shall be filed with the City prior to the time Consultant starts any work under this agreement. Consultant shall furnish the City certificates of insurance in a form acceptable to the City evidencing that the insurance coverage required to be maintained by Consultant hereunder are in full force and effect. In addition, insurance policies applicable hereto shall contain a provision that provides that the City shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.
- F. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions and limits shall constitute a material breach of the Agreement. In such event, as its sole discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.

Section XVI - Indemnification

- A. Consultant hereby agrees to indemnify, defend and hold harmless the City, its officials, officers, and employees from any and all third party claims, damages, suits, costs and expenses (including reasonable attorney fees, expert witness fees, court costs, and all associated defense fees), liability, actions or proceedings of any kind or nature to the extent caused or claimed to be caused directly or indirectly by the comparative fault of Consultant for negligent acts or errors or omissions, its agents, servants, employees or subconsultants occurring in the performance of its services under the Agreement. The insurance coverage specified in this Agreement constitutes the minimum requirements and these requirements do not lessen or limit the liability of Consultant hereunder.
- B. Consultant agrees that it will contractually obligate its subconsultants to indemnify and hold harmless the indemnitees identified in this Section to the same extent that Consultant is required to indemnify and hold harmless said indemnitees.

- C. In the event of the filing of record of a lien or verified claim against any property on which the ASR Program Review is located by Consultant, by a subconsultant, or by any other person or entity for which Consultant may be responsible, Consultant shall promptly remove the lien or claim in accordance with the laws of the State of Kansas.
- D. Consultant shall protect, defend, indemnify, and hold harmless the City from and against any claims, actions, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) in the event that litigation is filed by one of Consultant's subconsultants for non-payment by Consultant to that subconsultant.
- E. Consultant shall take reasonable actions to inform the City of known potential patents on processes, designs, or devices that may be incorporated into the ASR Program Review. Consultant agrees to protect, defend and save harmless the City against any claim or demand for payment for the use of any patented or copyrighted material, process, design, article or device that may enter into the work being performed by Consultant under this Agreement to the extent that the City shall have provided Consultant reasonable notice of such claim or demand for payment.
- F. The City does not agree to indemnify, hold harmless, exonerate or assume the defense of Consultant or any other person, or entity whatsoever, for any purpose whatsoever by or in connection with this Agreement.

Section XVII – Consequential Damages

- A. In no event shall either Party be liable in tort or in contract for any incidental, special, indirect or consequential damages of any kind, including, without limitation, claims for lost profits or loss of goodwill, even if that Party has been advised of the possibility of such damages, by reason of any breach or default under this Agreement. This section shall not be interpreted to affect in any way Consultant's obligations with respect to a third party.

Section XVIII- Force Majeure

- A. Neither Party shall be responsible nor deemed to be in default, on account of damages or delays in performance of the Agreement due to a cause beyond its control and not occasioned by its fault or negligence. Such causes include but are not limited to: Acts of God, labor disputes, strikes or lockouts, acts of war or terrorism; provided, however, that the existence of such causes shall not excuse the delaying or nonperforming Party from the resulting delay unless such Party shall have given the other Party written notice on any excusable delays referenced to above, within ten (10) days (or such additional time as may be approved by the other Party) after the delaying or nonperforming Party has actual knowledge that such occurrences will result in damages or delays.

Section XIX - Miscellaneous

- A. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law. The City's rights and remedies are separate and cumulative. No consent by the City, expressed or implied, to any breach of the Agreement or waiver or failure to exercise in any respect any right or remedy provided under this Agreement by the City waives or bars any future right or remedy hereunder or available at common law.
- B. Neither the City's review, approval or acceptance, nor payment for, any of the work or services required to be performed by the Consultant under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- C. The laws of the state of Kansas will govern the construction and operation of and the remedies available under this Agreement. Venue for any lawsuit arising under or related to this Agreement shall be before the Eighteenth Judicial District Court of Kansas (Sedgwick County, Kansas) or the United States District Court for the District of Kansas sitting in Wichita, Kansas.
- D. In the event any dispute arises under this Agreement and during the time such dispute is being resolved, Consultant hereby agrees that it shall continue performance under this Agreement in accordance with the terms and conditions hereof since time is of the essence and City shall continue to compensate Consultant for all undisputed payment amounts. Consultant's failure to continue expeditious performance due to a dispute arising under this Agreement, at the option of the City, shall be construed as a material breach of this Agreement.
- E. Consultant and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.
- F. The term of this Agreement shall commence upon written Notice to Proceed from the City to Consultant and end upon final completion of the services to be provided hereunder by Consultant. The insurance and indemnification provisions of this Agreement shall survive such termination.
- G. The captions and headings set forth in this Agreement are for convenience and for reference only and shall not be construed so as to define or limit the terms and provisions hereof.
- H. This Agreement is intended as the complete integration of all prior oral or written understandings between the Parties. No prior or contemporaneous additions, deletions or other amendments shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement.
- I. Supplemental Agreements and other amendments to the Agreement shall require approval by the City in the manner required by City policy, provided that City Staff or the Project Manager (as otherwise provided in writing by the City) may negotiate and approve modifications to ***Attachments 2 and 4***, on behalf of the City, as may be required from time to time.

- J. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.
- K. All notices, demands, or other documents or instruments required or permitted to be served upon either Party hereto shall be in writing and shall be deemed duly served when delivered in person to an officer or partner of the Party being served, by facsimile transmission or when mailed certified or registered mail, return receipt requested, postage prepaid addressed to parties at the addresses stated below:

City:

Consultant:
- L. By signing this Agreement, the representatives of the parties represent that they are duly authorized by their principal to execute this Agreement, and that they have agreed to be bound by all of its provisions.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

By: _____

Title: _____

Date: _____, 2010

ATTEST:

City Clerk

APPROVED AS TO FORM: _____
City Attorney

Consultant,
HDR Engineering Inc.
4435 Main Street, Suite 1000
Kansas City, MO 64111

By: 
(Signature)

Name: Donald R. Curtis, Jr.
Senior Vice President

Date: April 8, 2010

Attachment 1

Scope of Services Aquifer Storage and Recovery Program Review City of Wichita April 13, 2010

Project Background

The City of Wichita has used the Equus Beds Aquifer as a major source of its raw water supply since the 1940s. Realizing the aquifer is not an unlimited resource; the Wichita City Council adopted an Integrated Local Water Supply Plan (ILWSP) in 1993 which identified water resources for Wichita's water supply needs through the year 2050. The ILWSP was developed assuming that, by 2050:

- The City's population would increase from 335,000 to 558,000
- The water demand would grow from 62 million gallons per day (mgd) to 125 mgd
- Peak day demands would grow from 125 mgd to 250 mgd.

By adopting the recommendations in the ILWSP, the City has transitioned from an approach of relying primarily on a single water source (the Equus Beds Aquifer), to an approach of using multiple raw water supply sources including:

- Increased usage of the Cheney Reservoir
- Development of a 100 mgd Aquifer Storage and Recovery (ASR) system in the Equus Beds Aquifer
- Construction of a Water intake along the Little Arkansas River
- Re-development of the Bentley Reserve well field (10 mgd)
- Expansion of the City's well field adjacent to the Little Arkansas River (to 45 mgd)
- Construction of new raw water pipelines
- Construction of new water treatment facilities

Once completed, the recharged water in the aquifer will help meet the city's increasing water demands during an extended dry weather (or drought) period. A secondary benefit is that it will protect the Equus Beds Aquifer from chloride contamination migrating into the City's drinking water well field.

The ASR project has been constructed in phases. Phase I was completed in 2006 and provides the ability to capture and recharge over 10 mgd from the Little Arkansas River. Phase II is currently being implemented by the City and includes numerous design and construction projects at various stages of completion. That would result in a system that can recharge 30 mgd to the Equus Beds Aquifer.

In recent years, actual demand has fallen short of projections, placing additional burden on the water utility's revenue requirements. The City is interested in re-evaluating the demand projections and the Phase II project in general in an effort to minimize the resulting financial impacts.

Understanding

The scope of work for this project will result in a report which evaluates the ILWSP in general and the Phase II ASR program in particular and makes recommendations regarding the implementation of the program for construction and financing. The scope must include comprehensive evaluation of the background information for the program. This effort will be very focused and must have the key components addressed in a 30 day period.

Management Team

Don Lindeman, will be integrated with City staff. With access to the internet and a printer, Don can operate in the City offices like he is working in his office in Kansas City, and he will have an HDR assistant coordinator available as needed making him fully self sufficient.

Demand Projections and Probability

When reviewing the demand projections that are the basis for the ASR Program Capital Improvement Plan, Consultant will look at several conditions that may have changed since the original projections such as population growth, social, and economic factors. In addition Consultant will take a broad view of the historical demand and droughts that have occurred. Consultant will incorporate the shift in consumer usage and social attitudes that have begun to emerge due to the focus on “sustainability” that may carry on beyond the current economic downturn. With this information, Consultant can generate a range, or “envelope”, of possible growth scenarios.

Facilities Engineering Cost Evaluation

In the cost evaluation Consultant will look at cost reduction strategies to obtain the best value alternatives. For the evaluation of the existing Phase II program, Consultant plan to use a Cost Evaluation Workshop approach to provide the focused and intensive effort required for this evaluation. A senior team from the various design disciplines will participate in this effort. The evaluation will focus on these key areas:

- Project development and cost estimates for the alternative water supply options;
- Project criteria and cost estimates for reduced capacity of scenarios for Phase II
- Possible cost saving measures for the existing Phase II program
- Possible phasing approaches for the Phase II program

One member of this team is a representative of HDR Design Build who will be the lead for developing estimated costs. This workshop will be for 2 days with key members of the evaluation team.

Financial Planning

Financial planning is just one part of the financial approach for the City. Consultant will not only address all key components of the project, but take a more holistic view looking for opportunities to improve the financial strength of the utility. Consultant's financial team is a critical component of this project.

Work Plan

Each of the major tasks listed below describes the overall objective. Under each major task are the subtasks for activities. Under each activity are the requirements for input and a description of deliverables.

All work will proceed during all owner reviews (max 2 days) and any delays or significant rework as a result may require a schedule adjustment.

TASK 1.0 Management – Objective: to confirm goals, review project approach, define project administration requirements, establish lines of communication, and assemble background data and financial information.

- 1.1 Management plan and kickoff meeting
 - Prepare project guide and schedule (Deliverable)
 - Kickoff meeting (Input)
- 1.2 Project monitoring and control
 - Weekly updates (Deliverable)
 - Meetings with City (Input)
 - Schedule/budget monitoring
 - Project invoice and reporting (Deliverable)
- 1.3 Background Data Review – Due to the compressed nature of the schedule, Consultant would request that the City have all known data to be given to the consultant, compiled and ready for the consultant to receive electronically on the date of the NTP.
 - Items listed in the RFQ (Input)
 - Identify other needed data (Input)

TASK 2.0 ILWS Plan and Phase II Program Review – Objective: to conduct a review of ILWS plan, current Phase II program and financial plan, fiscal policies, evaluate options for alternative water supply options, review the impact of a reduced capacity for Phase II, and complete a facilities cost evaluation analysis.

- 2.1 Water supply and demand projections
 - Current demands and trends
 - Recent impact of hydrologic/precipitation on demands
 - Impact of current economic conditions
 - Demand projections (Deliverable)
- 2.2 Phase II ASR program review
 - Project definition
 - Hydrologic review
 - Facilities review
 - Cost review
 - Delivery and implementation methodology review
- 2.3 Alternative water supply options
 - Alternative development
 - Review and analysis
- 2.4 Phase II Reduced Capacity Evaluation
 - Define reduced size of Phase II
 - Key factors impacting demand and alternatives to restrict/reduce demand
 - Impact of Capacity on Design year
 - Approximate cost of reduced capacity program (Deliverable)
- 2.5 Project Concepts and Cost Savings Evaluation
 - Brainstorm Cost reduction ideas (Input)
 - Screen Viable options (Input)
 - Develop cost saving alternatives
 - Review impact on quality of ASR goals and quality
 - Meeting Minutes (Deliverable)
 - Recommend Cost savings opportunities (Deliverable)
- 2.6 Financial Review of Phase II
 - Review existing analyses of life cycle costs for Phase II
 - Review other Water Utility facilities costs
 - Evaluate current fiscal policies (Input)
 - Assess ability to maintain balance of debt, asset values and O/M
 - Review rate goals and policies

- Evaluate effectiveness of recovering system revenue requirements, provide reserves, maintain bond rating and provide for system reinvestment requirements
- 2.7 Financial evaluation of modified Phase II concepts
 - Evaluate impact of reduced costs on financial plan
 - Impact on revenue requirements
 - Impact on bond reserve requirements and bond rating
 - Probable rate impact (Deliverable)
- 2.8 Financial plan Recommendations
 - Define approach to secure resources to support initiatives
 - Recommend strategies to maximize bonding capability (Deliverable)
 - Recommend policies to maintain cash reserves (Deliverable)
 - Recommend policies for sufficiency and appropriateness of rates (Deliverable)

TASK 3.0 Final Report – Objective: to prepare and deliver a final report that summarizes the results of the study.

- 3.1 Draft report (Deliverable)
 - Alternative sources review
 - ASR Program assessment
 - Project cost estimates
 - Delivery methods
 - Financing plan
- 3.2 Report Review and comment (Input)
 - Quality control review
 - City Review
- 3.3 Final Report (Deliverable)
 - Provide 15 hard copies
 - Provide one digital copy
 - Present findings at two meetings

Milestone Schedule

Aquifer Storage & Recovery Program Review													
Task Name	Duration	Start	Finish	April 2010									
				Apr 11, '10	Apr 18, '10	Apr 25, '10	May 2, '10	May 9, '10	May 16, '10	May 23, '10	May 30, '10	May 6, '11	
				M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	
Task 1.0 Management	30 days	Wed 4/14/10	Thu 5/13/10										
Notice to Proceed	0 days	Wed 4/14/10	Wed 4/14/10										
1.1 Management Plan and Kickoff Meeting	4 days	Wed 4/14/10	Sat 4/17/10		4/17								
1.2 Project Monitoring and Control	30 days	Wed 4/14/10	Thu 5/13/10										
1.3 Background Data Review	7 days	Wed 4/14/10	Tue 4/20/10										
Task 2.0 ILWS Plan and Phase II Program Review	25 days	Wed 4/14/10	Sat 5/8/10										
2.1 Water Supply and Demand Projections	12 days	Wed 4/14/10	Sun 4/25/10										
2.2 Phase II ASR Program Review	15 days	Wed 4/14/10	Wed 4/28/10										
2.3 Alternative Water Supply Options	8 days	Wed 4/21/10	Wed 4/28/10										
2.4 Phase II Reduced Capacity Evaluation	8 days	Wed 4/21/10	Wed 4/28/10										
2.5 Project Concepts and Cost Savings Evaluation (VE Type Review)	5 days	Fri 4/30/10	Wed 5/5/10										
2.6 Financial Review of Phase II	15 days	Wed 4/14/10	Wed 4/28/10										
2.7 Financial Evaluation of Modified Phase II Concepts	8 days	Wed 4/28/10	Wed 5/5/10										
2.8 Financial Plan Recommendations	11 days	Wed 4/28/10	Sat 5/8/10										
Task 3.0 Task Series 500 Final Report	15 days	Wed 4/28/10	Thu 5/13/10										
3.1 Draft Report	8 days	Wed 4/28/10	Wed 5/5/10										
3.2 Report Review and Comment	6 days	Wed 5/5/10	Mon 5/10/10										
3.3 Final Report	3 days	Tue 5/11/10	Thu 5/13/10										

ASR Program Review
April 13, 2010

Task

Split

Progress

Milestone

Summary

Project Summary

External Tasks

External Milestone

Deadline

Due to the compressed nature of the schedule, we would request that the City have all known data to be given to the consultant, compiled and ready for the consultant to receive on the date of NTP.

Page 1

Due to the compressed nature of the schedule, we would request that the City have all known data to be given to the consultant, compiled and ready for the consultant to receive on the date of NTP.

ASR Program Review
April 13, 2010

Task
Split
Progress

Milestone
Summary
Project Summary

External Tasks
External Milestone
Deadline

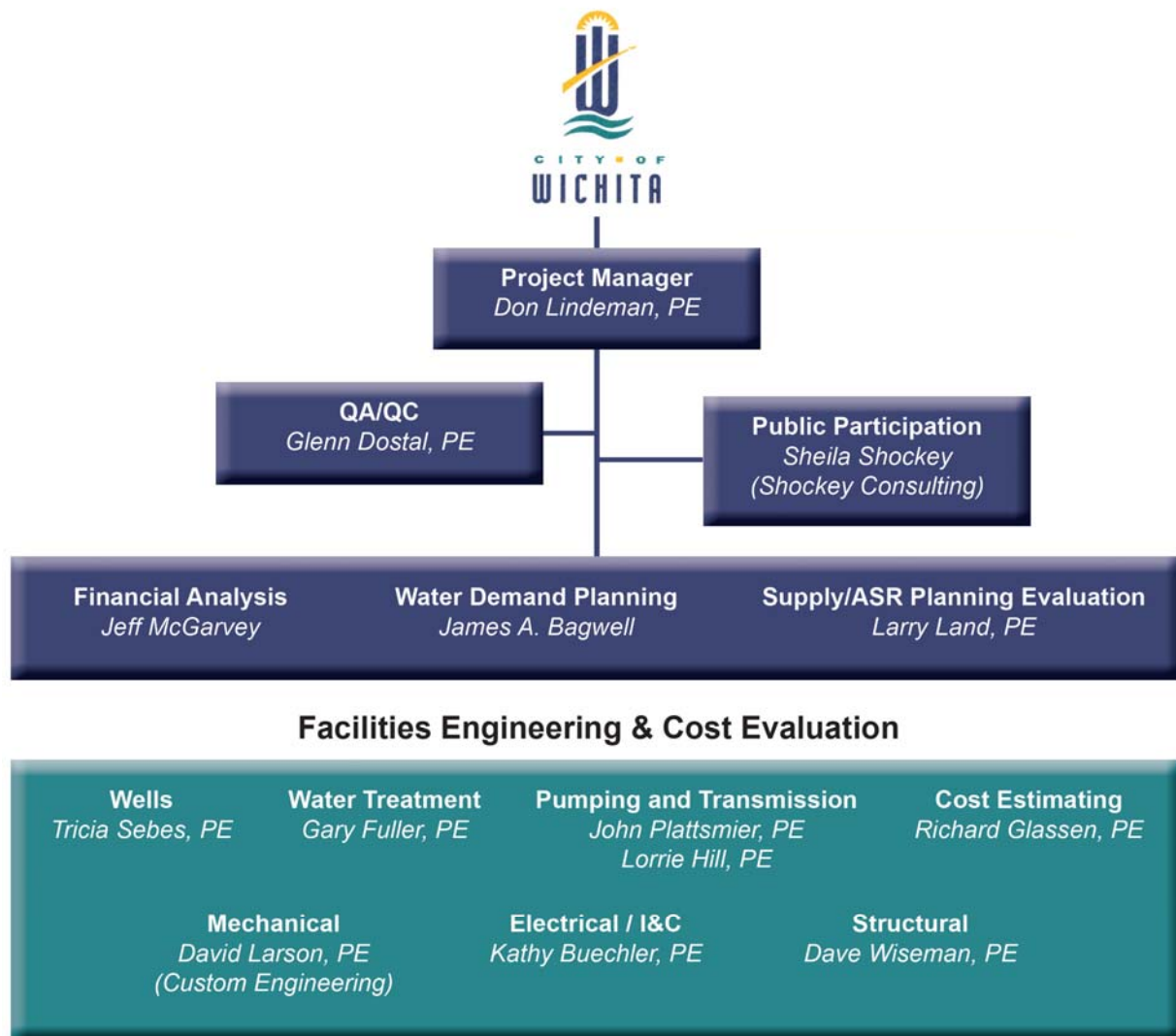
Attachment 3
Compensation
Aquifer Storage & Recovery Program Review
City of Wichita, Kansas
HDR Engineering Inc.
April 13, 2010

Task Description	LEVEL OF EFFORT, HOURS																		LABOR	EXPENSES	Total Fee \$
	Principal (QA/QC)	Proj Mngr	Sr.Demand Engr	Demand Asst Engr	ASR Engr Land	Wells Engr Sebes	Sr. Financial Consultant McGarvey	Financial Consultant Fairbanks	Treatment Engr Fuller	Pipeline Sr Engr Plattsmier	Pipeline Engr Hill	Treatment Asst Engr	Cost Engr Glassen	Elec/I&C Engr Buechler	Struct. Engr Wiseman	Mech Engr Larson	Admin Asst. Staff	TOTAL LABOR HOURS			
	Dostal	Lindeman	Bagwell																		
Client Billing Rates	\$260	\$205	\$220	\$125	\$220	\$135	\$265	\$135	\$235	\$290	\$100	\$100	\$215	\$170	\$185	\$155	\$65				
1 Management																					
1.1 Management Plan and Kick-Off Meeting	8	12	0	0	0	0	8	0	0	0	4	0	0	0	0	0	8	40	7,580	4,500	
1.2 Project Monitoring and Control	0	13	0	0	0	0	0	0	0	0	4	0	0	0	0	0	8	25	3,585	0	
1.3 Background Data Review	4	9	4	4	8	8	10	8	4	4	4	0	4	4	4	2	6	87	16,315	1,000	
1 Management Subtotal	12	34	4	4	8	8	18	8	4	4	12	0	4	4	4	2	22	152	27,480	5,500 33,000	
2 ILWS Plan and Phase II Program Review																					
2.1 Water Supply and Demand Projections	0	4	24	24	0	0	0	0	0	0	0	0	0	0	0	0	6	58	9,490	0	
2.2 Phase II ASR Program Review	0	5	0	0	20	20	0	0	0	0	0	0	6	0	0	0	6	57	9,805	0	
2.3 Alternative Water Supply Options	2	4	0	0	8	8	0	0	12	5	23		0	0	0	0	4	66	11,010	0	
2.4 Phase II Reduced Capacity Evaluation	0	4	12	12	12	12	0	0	8	0	0	0	14	0	0	0	4	78	14,370	0	
2.5 Project Concepts and Cost Savings Evaluation	16	24	8	0	8	0	0	0	8	8	4		16	24	24	14	8	162	31,850	4,800	
2.6 Financial Review of Phase II	0	6	0	0	0	0	22	32	0	0	0	0	0	0	0	0	8	68	11,900	0	
2.7 Financial Evaluation of Modified Phase II Concepts	0	4	0	0	0	0	10	20	0	0	0	0	0	0	0	0	6	40	6,560	0	
2.8 Financial Plan Recommendations	0	3	0	0	0	0	16	32	0	0	0	0	0	0	0	0	6	57	9,565	0	
2 ILWS Plan and Phase II Program Review Subtotal	18	54	44	36	48	40	48	84	28	13	27	0	36	24	24	14	48	586	104,550	4,800 109,400	
3 Final Report																					
3.1 Draft Report	4	10	4	4	6	6	8	8	4	4	24		28	4	4	0	32	150	23,530	700	
3.2 Report Review and Comment	4	10	2	2	2	2	2	4	2	2	4		0	0	0	0	4	40	7,270	600	
3.3 Final Report	0	12	0	0	0	0	12	0	0	0	8		0	0	0	0	16	48	7,480	3,000	
3 Final Report Subtotal	8	32	6	6	8	8	22	12	6	6	36	0	28	4	4	0	52	238	38,280	4,300 42,600	
TOTAL, hours	38	120	54	46	64	56	88	104	38	23	75	0	68	32	32	16	122	976			
TOTAL, dollars																			170,310	14,600 185,000	

All cost are based on a completion of the review within the 30 day time frame. If services are extended longer than that, scope and fee will be modified accordingly.

Attachment 4

List of Project Team Members and Key Personnel



Attachment 5

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
April 13, 2010

TO: Mayor and City Council

SUBJECT: Amendments to Chapter 5.26 relating to Possession of Controlled Substances

INITIATED BY: Law

AGENDA: New Business

Recommendation: Approve first reading of the ordinance.

Background: During the 2009 legislative session, the Kansas Legislature passed a number of bills related to the distribution, possession and manufacture of controlled substances. The amendments were passed at the urging of state prosecutors to allow more flexibility in the charging of controlled substance offenses. The proposed amendments are necessary to bring the City's ordinances into compliance with state law.

Analysis: The legislative amendments reclassified a number of drug offenses as misdemeanors rather than felony crimes. The proposed ordinance amendments provide:

1. Section 5.26.020 is amended to make possession of controlled substance analogs illegal. An analog is a substance which has a chemical structure substantially similar to a controlled substance which is regulated by the Uniform Controlled Substances Act.
2. Section 5.26.030 is amended to prohibit the distribution, or possession with intent to distribute, drug paraphernalia. Previously it was a felony to sell or distribute drug paraphernalia.
3. Section 5.26.035 is created to prohibit the distribution or possession with intent to distribute a non-controlled substance which is represented to be a controlled substance.
4. Section 5.26.040 is amended to require the court to sentence a defendant, who is less than twenty-one years of age, to complete an Alcohol Drug Safety Action Program, if the court finds that the defendant was transporting, in a vehicle, a controlled substance or controlled substance analog at the time of his or her arrest.

Financial Considerations: None.

Goal Impact: These amendments further the goal of Safe and Secure Neighborhoods.

Legal Considerations: The proposed amendments have been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the first reading of the ordinance as submitted be approved.

Attachment: Ordinance

First Published in The Wichita Eagle on _____

DELINEATED

01/14/2010

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 5.26.020, 5.26.030, AND 5.26.040, CREATING SECTIONS 5.26.005 AND 5.26.035 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO DRUGS AND REPEALING THE ORIGINALS OF SECTIONS 5.26.020, 5.26.030, AND 5.26.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.26.005 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Definitions. As used in this Chapter, the following terms shall have the following meanings:

(a) ‘Controlled substance’ means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) (1) ‘Controlled substance analog’ means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) 'Controlled substance analog' does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption.

(c) 'Cultivate' means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(d) 'Distribute' means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. 'Distribute' includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. 'Distribute' does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the Pharmacy Act of the State of Kansas, the Uniform Controlled Substances Act, or otherwise authorized by law.

(e) 'Drug' means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

(f) 'Drug paraphernalia' means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding,

converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act. 'Drug paraphernalia' shall include, but is not limited to:

(1) kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) any smoking pipe manufactured to disguise its intended purpose;

(O) wired cigarette papers; or

(P) cocaine freebase kits.

(g) 'Immediate precursor' means a substance which the board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(h) 'Highway' means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(i) 'Isomer' means all enantiomers and diastereomers.

(i) 'Marijuana' means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. 'Marijuana' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(k) 'Narcotic drug' means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(l) 'Opiate' means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. 'Opiate' does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). 'Opiate' does include its racemic and levorotatory forms.

(m) 'Opium poppy' means the plant of the species Papaver somniferum
1. except its seeds.

(n) 'Or circumstances where one reasonably should know' that an item will be used in violation of this section, shall include, but not be limited to, the following:

(1) Actual knowledge from prior experience or statements by customers;

(2) inappropriate or impractical design for alleged legitimate use;

(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or

(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

(o) 'Person' means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

(p) 'Poppy straw' means all parts, except the seeds, of the opium poppy, after mowing.

(q) 'Possession' means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(r) 'Simulated controlled substance' means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

(s) 'Street means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.'

SECTION 2. Section 5.26.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful acts regarding depressants, stimulants or other substances.

~~Except as authorized by the Uniform Controlled Substances Act, K.S.A. 65-4101 et. seq. and amendments thereto, it shall be unlawful for any person to possess or have under such person's control:~~

Except as authorized by the Uniform Controlled Substances Act, K.S.A. 65-4101, et seq., no person shall possess or have under such person's control any of the following controlled substances or controlled substance analogs thereof:

(a) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(b) Any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(c) Any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(d) Any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109 and amendments thereto.”

SECTION 3. Section 5.26.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Possession of drug paraphernalia, controlled substances illegal.

(a) No person shall use or possess with intent to use:

(1) Any simulated controlled substance;

(2) any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act;

(3) any drug paraphernalia for the planting, propagation, growing or harvesting of less than five marijuana plants.

(b) No person shall distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to:

(1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; or

(2) store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

(c) As used in this section, 'of under circumstances where one reasonably should know' that an item will be used in violation of this section shall include but not be limited to the following:

(1) actual knowledge from prior experience or statements by customers;

(2) inappropriate or impractical design for alleged legitimate use;

(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia;

(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically to use as drug paraphernalia.

~~(b)~~ (d) The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of another part in a transaction involving a controlled substance.

~~(e) As used in this section:~~

~~(1) 'Controlled substance' means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.~~

~~(2) 'Drug paraphernalia' means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing,~~

~~compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of the uniform controlled substances act. "Drug paraphernalia" shall include, but is not limited to:~~

~~(a) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived.~~

~~(b) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.~~

~~(c) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.~~

~~(d) Scales and balances used or intended for use in weighing or measuring controlled substances.~~

~~(e) Diluents and adulterants, including but not limited to quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances.~~

~~(f) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;~~

~~(g) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.~~

~~(h) Capsules, balloons, envelopes, bags and any other item or container used or intended for use in packaging, possessing, or transporting controlled substances.~~

~~(i) Containers and any other object used or intended for use in storing or concealing controlled substances.~~

~~(j) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.~~

~~(k) Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing any unlawful controlled substance into the human body, which shall include but not be limited to: Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls, water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device, carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation, smoking and carburetion masks, roach clips, miniature cocaine spoons and cocaine vials, chamber smoking pipes, carburetor~~

~~smoking pipes, electric smoking pipes, air-driven smoking pipes, chillums, bongs, ice pipes or chillers, any smoking pipe manufactured to disguise its intended purpose, wired cigarette papers, or cocaine freebase kits.~~

~~(3) 'Person' means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association or other legal entity.~~

~~(4) 'Simulated controlled substance' means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.~~

~~(d)~~ (f) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or person in control of the object concerning its use.

(2) Prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance.

(3) The proximity of the object, in time and space, to a direct violation of the uUniform eControlled sSubstances aAct.

(4) The proximity of the object to controlled substances.

(5) The existence of any residue of controlled substances in the object.

(6) Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control to the object knows, or should reasonably know, intends to use the object to facilitate a violation of the ~~u~~Uniform ~~e~~Controlled ~~s~~Substances ~~a~~Act. The innocence of an owner or person in control of the object as to a direct violation of the ~~u~~Uniform ~~e~~Controlled ~~s~~Substances ~~a~~Act shall not prevent a finding that the object is intended for use as drug paraphernalia.

(7) Oral or written instructions provided with the object concerning its use.

(8) Descriptive materials accompanying the object which explain or depict its use.

(9) National and local advertising concerning the object's use.

(10) Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products;

~~(10)~~ (11) The manner in which the object is displayed for sale.

~~(11)~~ (12) The existence and scope of legitimate uses for the object in the community.

~~(12)~~ (13) Expert testimony concerning the object's use.

~~(13)~~ (14) Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia.

~~(14)~~ (15) Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, sale or cultivation of controlled substances.

~~(e) A violation of this ordinance is a misdemeanor, and the sentence, upon conviction, shall be imprisonment of up to 12 months in the Sedgwick County Jail and/or a fine not exceeding \$2,500."~~

SECTION 4. Section 5.26.035 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Distribution of non-controlled substance. (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any substance, which is not a controlled substance, to a person who is over the age of eighteen:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which

would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;

(2) the distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or

(3) the physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.”

SECTION 5. Section 5.26.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Penalty. (a) ~~Any person who violates any~~ A violation of the provisions of this chapter within the corporate limits of the city shall be guilty of a ~~is a misdemeanor and shall be punished by, upon conviction, the sentence shall be~~ a fine not to exceed two thousand five hundred dollars (\$2,500.00), and/or by one ~~year's imprisonment of up to twelve (12) months in the Sedgwick County jail or~~ by both such fine and imprisonment.

(b) In addition to any other sentence authorized by this chapter, any person convicted of having violated the terms of this chapter, while under twenty-one (21) years of age, shall be ordered to submit to and complete a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008

and amendments thereto and to pay a fee for such evaluation. If the judge finds that the person is indigent, the fee may be waived.”

SECTION 6. The originals of Sections 5.26.020, 5.26.030, and 5.26.040 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 7. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2010.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

01/14/2010

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 5.26.020, 5.26.030, AND 5.26.040, CREATING SECTIONS 5.26.005 AND 5.26.035 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO DRUGS AND REPEALING THE ORIGINALS OF SECTIONS 5.26.020, 5.26.030, AND 5.26.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.26.005 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Definitions. As used in this Chapter, the following terms shall have the following meanings:

(a) ‘Controlled substance’ means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) (1) ‘Controlled substance analog’ means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) 'Controlled substance analog' does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption.

(c) 'Cultivate' means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(d) 'Distribute' means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. 'Distribute' includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. 'Distribute' does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the Pharmacy Act of the State of Kansas, the Uniform Controlled Substances Act, or otherwise authorized by law.

(e) 'Drug' means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

(f) 'Drug paraphernalia' means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding,

converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act. 'Drug paraphernalia' shall include, but is not limited to:

(1) kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) any smoking pipe manufactured to disguise its intended purpose;

(O) wired cigarette papers; or

(P) cocaine freebase kits.

(g) 'Immediate precursor' means a substance which the board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(h) 'Highway' means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(i) 'Isomer' means all enantiomers and diastereomers.

(i) 'Marijuana' means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. 'Marijuana' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(k) 'Narcotic drug' means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(l) 'Opiate' means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. 'Opiate' does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). 'Opiate' does include its racemic and levorotatory forms.

(m) 'Opium poppy' means the plant of the species *Papaver somniferum*
1. except its seeds.

(n) 'Or circumstances where one reasonably should know' that an item will be used in violation of this section, shall include, but not be limited to, the following:

(1) Actual knowledge from prior experience or statements by customers;

(2) inappropriate or impractical design for alleged legitimate use;

(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or

(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

(o) 'Person' means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

(p) 'Poppy straw' means all parts, except the seeds, of the opium poppy, after mowing.

(q) 'Possession' means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(r) 'Simulated controlled substance' means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

(s) 'Street means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.'

SECTION 2. Section 5.26.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful acts regarding depressants, stimulants or other substances.

Except as authorized by the Uniform Controlled Substances Act, K.S.A. 65-4101, *et seq.*, no person shall possess or have under such person’s control any of the following controlled substances or controlled substance analogs thereof:

(a) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(b) Any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(c) Any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(d) Any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109 and amendments thereto.”

SECTION 3. Section 5.26.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Possession of drug paraphernalia, controlled substances illegal.

(a) No person shall use or possess with intent to use:

(1) Any simulated controlled substance;

(2) any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act;

(3) any drug paraphernalia for the planting, propagation, growing or harvesting of less than five marijuana plants.

(b) No person shall distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to:

(1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; or

(2) store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

(c) As used in this section, 'of under circumstances where one reasonably should know' that an item will be used in violation of this section shall include but not be limited to the following:

(1) actual knowledge from prior experience or statements by customers;

(2) inappropriate or impractical design for alleged legitimate use;

(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia;

(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically to use as drug paraphernalia.

(d) The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of another part in a transaction involving a controlled substance.

(f) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or person in control of the object concerning its use.

(2) Prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance.

(3) The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Act.

(4) The proximity of the object to controlled substances.

(5) The existence of any residue of controlled substances in the object.

(6) Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control to the object knows, or should reasonably know, intends to use the object to facilitate a violation of the Uniform Controlled Substances Act. The innocence of an owner or person in control of the object as to a direct violation of the Uniform Controlled Substances Act shall not prevent a finding that the object is intended for use as drug paraphernalia.

(7) Oral or written instructions provided with the object concerning its use.

(8) Descriptive materials accompanying the object which explain or depict its use.

(9) National and local advertising concerning the object's use.

(10) Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products;

(11) The manner in which the object is displayed for sale.

(12) The existence and scope of legitimate uses for the object in the community.

(13) Expert testimony concerning the object's use.

(14) Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance

into the human body as opposed to any legitimate use for the alleged paraphernalia.

(15) Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, sale or cultivation of controlled substances.”

SECTION 4. Section 5.26.035 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Distribution of non-controlled substance. (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any substance, which is not a controlled substance, to a person who is over the age of eighteen:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;

(2) the distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or

(3) the physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.”

SECTION 5. Section 5.26.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Penalty.** (a) A violation of the provisions of this chapter is a misdemeanor and, upon conviction, the sentence shall be a fine not to exceed two thousand five hundred dollars (\$2,500.00), and/or imprisonment of up to twelve (12) months in the Sedgwick County jail.

(b) In addition to any other sentence authorized by this chapter, any person convicted of having violated the terms of this chapter, while under twenty-one (21) years of age, shall be ordered to submit to and complete a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee for such evaluation. If the judge finds that the person is indigent, the fee may be waived.”

SECTION 6. The originals of Sections 5.26.020, 5.26 030, and 5.26.040 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 7. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2010.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

**City of Wichita
City Council Meeting
April 13, 2010**

TO: Mayor and City Council

SUBJECT: SUB2009-00085 -- Plat of South Meridian Odor Control Facility Addition located on the east side of Meridian, north of 47th Street South. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (10-0)

Background: This site, consisting of one lot on .496 acres, is located within Wichita's city limits and is zoned LC Limited Commercial. A Conditional Use (CON2009-00038) has been approved for a Major Utility.

Analysis: Water service is available to serve the site; sewer service will not be required.

The plat has been approved by the Metropolitan Area Planning Commission subject to conditions.

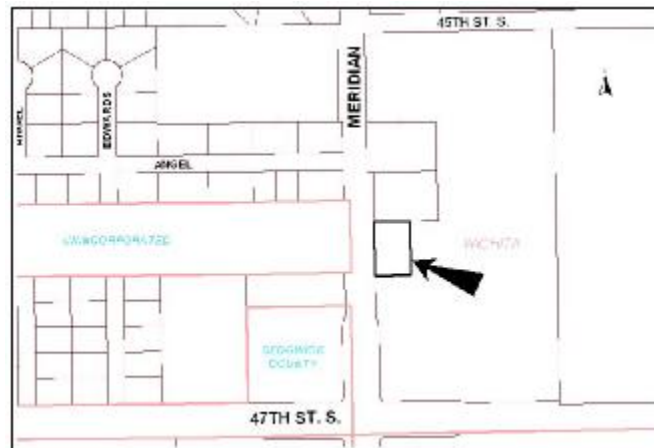
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council approve the plat and authorize the necessary signatures for approval of the plat and as owners.

Attachments: None.



City of Wichita
City Council Meeting
April 13, 2010

To: Mayor and City Council

Subject: VAC2009-00026 - Request to vacate platted drainage and utility easements; generally located between 13th Street North and the railroad tracks ½ mile north of 13th Street North and west of Greenwich Road. (District II)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicant is requesting consideration for the vacation of the platted drainage and utility easements located along the rear and side yards of Lots 21, 22, 23, 24, 31 and 32, Block 1, Waterfront Residential Addition. The applicant proposes to relocate the 20-foot drainage and utility easements. The relocation will place the easements on the lots on which they are currently located, but closer to their rear and side yards. The relocation of the public easements is associated with the relocation of the private Coffeyville Resources pipeline easement. The relocated subject easements would be in this private easement. The applicant has provided staff with a letter from the owner of Coffeyville Resources pipeline easement, which confirms that the public easement can be located within their private easement or that the private easement will be relocated and not encroached by the proposed relocated public easements. There are no utilities, manholes, sewer or water lines located in the described platted easements; they are in right-of-way or in the front yard. The applicant has provided Storm Water with new drainage plans, which they have reviewed and approved. The Waterfront Residential Addition was recorded with the Register of Deeds on July 18, 2008.

Analysis: The MAPC voted (14-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

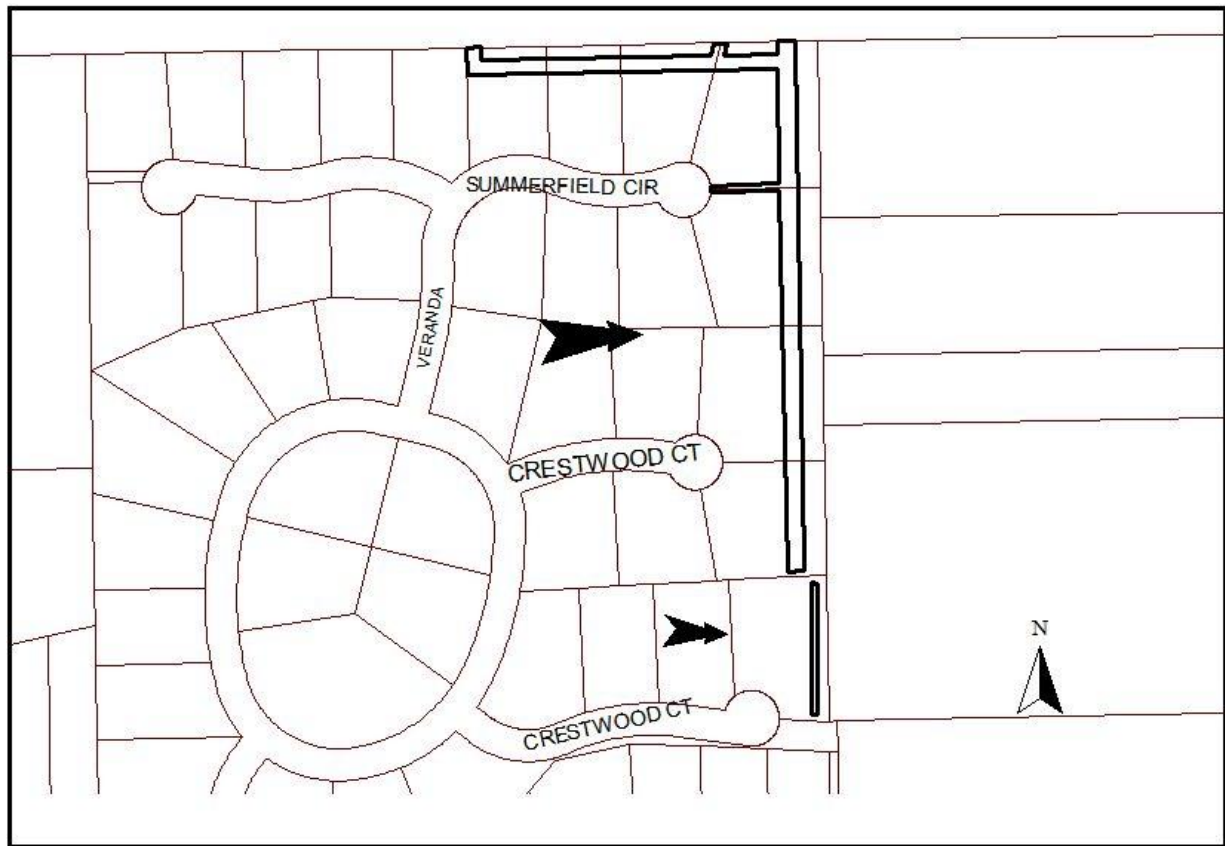
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: A certified copy of the Vacation Order, dedications by separate instruments of drainage pipe easements, a surface drainage easement, a sanitary sewer pipe and drainage pipe easement, and a drainage and utility easement will be recorded with the Sedgwick County Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Attachments: Dedications by separate instruments of drainage pipe easements, a surface drainage easement, a sanitary sewer pipe and drainage pipe easement, and a drainage and utility easement.



City of Wichita
City Council Meeting
April 13, 2010

TO: Wichita Airport Authority

SUBJECT: FlightSafety International – Supplemental Agreement No. 2

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Supplemental Agreement.

Background: In 1975, FlightSafety International (FSI) entered into a lease agreement with the Wichita Airport Authority for construction of a facility at 1951 Airport Road. In 1980, this lease was incorporated into a bond lease which also provided for the construction of two additional facilities located at 1851 Airport Road and 2 Learjet Way. In 1990, the bonds were refunded, and a new lease agreement was entered into through 2001. This agreement was superseded by an agreement entered into in December 2001 for the three facilities, which also included five, five-year renewal options through 2031. The current agreement includes an option for FSI to lease 40,000 sq. ft. of land identified as Tract 2 of 2 Learjet Way on Wichita Mid-Continent Airport. On June 3, 2008, the WAA approved Supplemental Agreement No. 1, which reflected FSI's interest in exercising the option to lease Tract 2, and established land rent to commence July 1, 2008, and facility rent to commence July 1, 2028.

Analysis: FSI recently completed construction of a \$1.1 Million, 6,200 sq. ft. expansion to their existing facility located at 2 Learjet Way, which includes space for one large simulator bay to house the newest, state-of-the-art Lear 45XR simulator with electric motion base and associated computer systems; two, ten-person computerized Matrix classrooms; an instructor's office; rooms for two graphical flight simulators; two simulator de-briefing rooms; a storage room and restroom. Also, additional parking was constructed.

In that construction of the project did not begin until some time after the dates reflected in Supplemental Agreement No. 1, FlightSafety requested that the rent be delayed until they could fully occupy the premises. The date of beneficial occupancy was October 9, 2009. Airport staff concurs with FlightSafety's request to delay the start of rent until the date of beneficial occupancy. Supplemental Agreement No. 2 reflects these changes.

Financial Considerations: As set out in the agreement, land rent is established at the rate of \$.065/sq. ft. through April 30, 2010. Approval of this supplement, utilizing the date of beneficial occupancy, will delay the rent commencement date for the additional land, resulting in an adjustment of \$3,306 for this time period. In addition, in order to allow the 20-year amortization of the facility, facility rent would be delayed until November 1, 2029.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through facilitating expansions which improve services to users of the airport and increase the assets of the WAA, thereby allowing the Airport to continue its operation on a self-sustaining basis. Further, this expansion has resulted in the addition of five instructors and has doubled the number of clients who come to Wichita to receive the training made available by the new equipment housed in the expanded facility.

Legal Considerations: The Law Department has approved the Supplemental Agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Supplemental Agreement, and authorize the necessary signatures.

Attachment: Supplemental Agreement No. 2.

SUPPLEMENTAL AGREEMENT NO. 2

By and Between

THE WICHITA AIRPORT AUTHORITY
Wichita, Kansas

And

FLIGHTSAFETY INTERNATIONAL INC.

THIS SUPPLEMENTAL AGREEMENT NO. 2, made and entered into this February 9, 2010, by and between THE WICHITA AIRPORT AUTHORITY, Wichita, Kansas, (“Landlord”), and FLIGHTSAFETY INTERNATIONAL INC. (“Tenant”).

WITNESSETH:

WHEREAS, the Landlord and Tenant entered into an Agreement dated December 1, 2001, for the purpose of leasing land and facilities, and Supplemental Agreement No. 1 dated June 3, 2008, for the purpose of exercising its option to lease additional land identified as Tract 2 of 2 Learjet Way to construct a facility addition, and to set out land rent for such; and

WHEREAS, the Landlord and Tenant are now desirous of amending the Agreement for the purpose of modifying the rent commencement date for Tract 2 to commence as of the date of beneficial occupancy, which is October 9, 2009, and

WHEREAS, the Landlord and Tenant agree that facility rent for the 2008 facility addition to the Learjet Learning Center shall not commence until November 1, 2029;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the parties hereto agree to the following amendment:

1. Schedule II, Ground Rent, is hereby superseded by Revised Schedule II.
2. Schedule III, Facilities Rent, is hereby superseded by Revised Schedule III.
3. Other Terms. All the terms and conditions of the original agreement, except as amended, shall remain and be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement No. 1 the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"LANDLORD"

By _____
Victor D. White, Director of Airports

ATTEST:

FLIGHTSAFETY INTERNATIONAL INC.

By _____

By _____

Title _____

Title _____

Craig Newell, Manager
"TENANT"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

REVISED SCHEDULE II
GROUND RENT

1951 Airport Road Site

TRACT 1 - 60,000 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/05	\$.04 per square foot	\$200.00
05/01/05 - 04/30/10	\$.065 per square foot	\$325.00
05/01/10 - 04/30/15	\$.07 per square foot	\$350.00
05/01/15 - 10/31/16	\$.075 per square foot	\$375.00

For each Additional Term thereafter, Ground Rent shall be at the Landlord's established current land rental rates.

TRACT 2 - 44,250 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/05	\$.04 per square foot	\$147.50
05/01/05 - 04/30/10	\$.065 per square foot	\$239.69
05/01/10 - 04/30/15	\$.07 per square foot	\$258.13
05/01/15 - 10/31/16	\$.075 per square foot	\$276.56

For each Additional Term thereafter, Ground Rent shall be at the Landlord's established current land rental rates.

2002 ADDITIONS - 15,000 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/02	\$.2081 per square foot	\$260.13
05/01/02 - 04/30/03	\$.2185 per square foot	\$273.13
05/01/03 - 04/30/04	\$.2294 per square foot	\$286.75
05/01/04 - 04/30/05	\$.2409 per square foot	\$301.13
05/01/05 - 04/30/06	\$.2529 per square foot	\$316.13
05/01/06 - 04/30/07	\$.2655 per square foot	\$331.88
05/01/07 - 04/30/08	\$.2788 per square foot	\$348.50
05/01/08 - 04/30/09	\$.2927 per square foot	\$365.88
05/01/09 - 04/30/10	\$.3073 per square foot	\$384.13
05/01/10 - 04/30/11	\$.3227 per square foot	\$403.38
05/01/11 - 04/30/12	\$.3388 per square foot	\$423.50
05/01/12 - 04/30/13	\$.3557 per square foot	\$444.63
05/01/13 - 04/30/14	\$.3735 per square foot	\$466.88
05/01/14 - 04/30/15	\$.3922 per square foot	\$490.25
05/01/15 - 04/30/16	\$.4118 per square foot	\$514.75
05/01/16 - 10/31/16	\$.4324 per square foot	\$540.50

Thereafter, Ground Rent shall increase by 5% each year commencing May 1 in each year until termination of the Lease.

1851 Airport Road Site**TRACT 1** - 123,619 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/05	\$.06 per square foot	\$618.10
05/01/05 - 04/30/10	\$.065 per square foot	\$669.60
05/01/10 - 04/30/15	\$.07 per square foot	\$721.11
05/01/15 - 10/31/16	\$.075 per square foot	\$772.62

For each Additional Term thereafter, Ground Rent shall be at the Landlord's established current land rental rates.

2 Learjet Way**TRACT 1** - 45,000 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/05	\$.06 per square foot	\$225.00
05/01/05 - 04/30/10	\$.065 per square foot	\$243.75
05/01/10 - 04/30/15	\$.07 per square foot	\$262.50
05/01/15 - 10/31/16	\$.075 per square foot	\$281.25

TRACT 2 - 40,000 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
10/09/09 - 04/30/10	\$.065 per square foot	\$216.67
05/01/10 - 04/30/15	\$.07 per square foot	\$233.33
05/01/15 - 10/31/16	\$.075 per square foot	\$250.00

For each Additional Term thereafter, Ground Rent shall at the Landlord's established current land rental rates.

REVISED SCHEDULE III

FACILITIES RENT

Cessna Learning Center (South Campus) (1951 Airport Road)
(except 2002 Facilities Addition)

11/01/01 - 10/31/16 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

2002 Facilities Addition to Cessna Learning Center (South Campus) (1951 Airport Road)

No Facilities Rent payable under the terms of this Lease.

Cessna Learning Center (North Campus) (1851 Airport Road)
(except 1996 Facilities Addition)

11/01/01 - 10/31/16 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

1996 Facilities Addition to Cessna Learning Center (North Campus) (1851 Airport Road)

11/01/01 - 10/31/26 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

Learjet Learning Center (Tract 1 Learjet Way)
(except for 2008 Facilities Addition)

11/01/01 - 10/31/16 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

2008 Facilities Addition to Learjet Learning Center (Tract 2 Learjet Way)

10/09/09 – 10/31/29 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

City of Wichita
City Council Meeting
April 13, 2010

TO: Wichita Airport Authority

SUBJECT: United Collateral Access Agreement

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Collateral Access Agreement.

Background: For many years, the Wichita Airport Authority has had an airline airport use and lease agreement with United Airlines for the airline's provision of commercial airline passenger services to users of Wichita Mid-Continent Airport. Current airline agreements extend through December 31, 2010. United Airlines owns the passenger loading bridge, which is situated at Gate 10 on the west concourse of the terminal building.

Analysis: United proposes to pledge some of its owned passenger loading bridges as security for obligations to a third party, 233 S. WACKER, LLC. In connection with the collateral pledge, United is requesting that the Wichita Airport Authority approve a Collateral Access Agreement between United and this third party.

Financial Considerations: There is no financial impact to the Wichita Airport Authority. All signatory airlines serving Mid-Continent Airport are required to provide security for the rentals, fees and charges due by furnishing a surety bond or irrevocable letter of credit to the Airport Authority, as opposed to using equipment as security for obligations.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through facilitating agreements which allow the airlines to make business decisions which promote their continued service in the Wichita community.

Legal Considerations: The Law Department has approved the Collateral Access Agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Collateral Access Agreement, and authorize the necessary signatures.

Attachment: Collateral Access Agreement.

SUPPLEMENTAL AGREEMENT NO. 2

By and Between

THE WICHITA AIRPORT AUTHORITY
Wichita, Kansas

And

FLIGHTSAFETY INTERNATIONAL INC.

THIS SUPPLEMENTAL AGREEMENT NO. 2, made and entered into this February 9, 2010, by and between THE WICHITA AIRPORT AUTHORITY, Wichita, Kansas, (“Landlord”), and FLIGHTSAFETY INTERNATIONAL INC. (“Tenant”).

WITNESSETH:

WHEREAS, the Landlord and Tenant entered into an Agreement dated December 1, 2001, for the purpose of leasing land and facilities, and Supplemental Agreement No. 1 dated June 3, 2008, for the purpose of exercising its option to lease additional land identified as Tract 2 of 2 Learjet Way to construct a facility addition, and to set out land rent for such; and

WHEREAS, the Landlord and Tenant are now desirous of amending the Agreement for the purpose of modifying the rent commencement date for Tract 2 to commence as of the date of beneficial occupancy, which is October 9, 2009, and

WHEREAS, the Landlord and Tenant agree that facility rent for the 2008 facility addition to the Learjet Learning Center shall not commence until November 1, 2029;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the parties hereto agree to the following amendment:

1. Schedule II, Ground Rent, is hereby superseded by Revised Schedule II.
2. Schedule III, Facilities Rent, is hereby superseded by Revised Schedule III.
3. Other Terms. All the terms and conditions of the original agreement, except as amended, shall remain and be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement No. 1 the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"LANDLORD"

By _____
Victor D. White, Director of Airports

ATTEST:

FLIGHTSAFETY INTERNATIONAL INC.

By _____

By _____

Title _____

Title _____

Craig Newell, Manager
"TENANT"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

REVISED SCHEDULE II
GROUND RENT

1951 Airport Road Site

TRACT 1 - 60,000 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/05	\$.04 per square foot	\$200.00
05/01/05 - 04/30/10	\$.065 per square foot	\$325.00
05/01/10 - 04/30/15	\$.07 per square foot	\$350.00
05/01/15 - 10/31/16	\$.075 per square foot	\$375.00

For each Additional Term thereafter, Ground Rent shall be at the Landlord's established current land rental rates.

TRACT 2 - 44,250 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/05	\$.04 per square foot	\$147.50
05/01/05 - 04/30/10	\$.065 per square foot	\$239.69
05/01/10 - 04/30/15	\$.07 per square foot	\$258.13
05/01/15 - 10/31/16	\$.075 per square foot	\$276.56

For each Additional Term thereafter, Ground Rent shall be at the Landlord's established current land rental rates.

2002 ADDITIONS - 15,000 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/02	\$.2081 per square foot	\$260.13
05/01/02 - 04/30/03	\$.2185 per square foot	\$273.13
05/01/03 - 04/30/04	\$.2294 per square foot	\$286.75
05/01/04 - 04/30/05	\$.2409 per square foot	\$301.13
05/01/05 - 04/30/06	\$.2529 per square foot	\$316.13
05/01/06 - 04/30/07	\$.2655 per square foot	\$331.88
05/01/07 - 04/30/08	\$.2788 per square foot	\$348.50
05/01/08 - 04/30/09	\$.2927 per square foot	\$365.88
05/01/09 - 04/30/10	\$.3073 per square foot	\$384.13
05/01/10 - 04/30/11	\$.3227 per square foot	\$403.38
05/01/11 - 04/30/12	\$.3388 per square foot	\$423.50
05/01/12 - 04/30/13	\$.3557 per square foot	\$444.63
05/01/13 - 04/30/14	\$.3735 per square foot	\$466.88
05/01/14 - 04/30/15	\$.3922 per square foot	\$490.25
05/01/15 - 04/30/16	\$.4118 per square foot	\$514.75
05/01/16 - 10/31/16	\$.4324 per square foot	\$540.50

Thereafter, Ground Rent shall increase by 5% each year commencing May 1 in each year until termination of the Lease.

1851 Airport Road Site**TRACT 1** - 123,619 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/05	\$.06 per square foot	\$618.10
05/01/05 - 04/30/10	\$.065 per square foot	\$669.60
05/01/10 - 04/30/15	\$.07 per square foot	\$721.11
05/01/15 - 10/31/16	\$.075 per square foot	\$772.62

For each Additional Term thereafter, Ground Rent shall be at the Landlord's established current land rental rates.

2 Learjet Way**TRACT 1** - 45,000 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
11/01/01 - 04/30/05	\$.06 per square foot	\$225.00
05/01/05 - 04/30/10	\$.065 per square foot	\$243.75
05/01/10 - 04/30/15	\$.07 per square foot	\$262.50
05/01/15 - 10/31/16	\$.075 per square foot	\$281.25

TRACT 2 - 40,000 square feet

<u>Year</u>	<u>Rate</u>	<u>Per Month</u>
10/09/09 - 04/30/10	\$.065 per square foot	\$216.67
05/01/10 - 04/30/15	\$.07 per square foot	\$233.33
05/01/15 - 10/31/16	\$.075 per square foot	\$250.00

For each Additional Term thereafter, Ground Rent shall at the Landlord's established current land rental rates.

REVISED SCHEDULE III

FACILITIES RENT

Cessna Learning Center (South Campus) (1951 Airport Road)
(except 2002 Facilities Addition)

11/01/01 - 10/31/16 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

2002 Facilities Addition to Cessna Learning Center (South Campus) (1951 Airport Road)

No Facilities Rent payable under the terms of this Lease.

Cessna Learning Center (North Campus) (1851 Airport Road)
(except 1996 Facilities Addition)

11/01/01 - 10/31/16 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

1996 Facilities Addition to Cessna Learning Center (North Campus) (1851 Airport Road)

11/01/01 - 10/31/26 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

Learjet Learning Center (Tract 1 Learjet Way)
(except for 2008 Facilities Addition)

11/01/01 - 10/31/16 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

2008 Facilities Addition to Learjet Learning Center (Tract 2 Learjet Way)

10/09/09 – 10/31/29 No Facilities Rent payable

For each Additional Term thereafter, Facilities Rent shall be the fair market value established pursuant to Section 2.2(c) of the Lease.

COLLATERAL ACCESS AGREEMENT

This COLLATERAL ACCESS AGREEMENT (this "**Agreement**") is made and entered into as of April 13, 2010, by THE WICHITA AIRPORT AUTHORITY, (the "**Property Owner**"), in favor of 233 S. WACKER LLC, a Delaware limited liability company (collectively with its successors and assigns, the "**Secured Party**"), having an address at 8114 North Lawndale Avenue, Skokie, Illinois 60076.

RECITALS

A. United Air Lines, Inc. ("**Company**"), is party to that certain Lease dated of October 27, 2009 by and between Company and the Secured Party (as amended, supplemented or otherwise modified from time to time, the "**Lease**").

B. To secure payment of certain of the Company's obligations and liabilities to Secured Party (collectively, the "**Obligations**"), Secured Party has required that Company grant to Secured Party a security interest in Company's passenger loading bridges (the "Loading Bridges") and proceeds thereof (collectively, the "**Collateral**") pursuant to that certain Security Agreement dated as of October 27, 2009 between Company and Secured Party, as such agreement may be amended, amended and restated, supplemented or otherwise modified (the "**Security Agreement**"). Notwithstanding anything to the contrary in this Agreement, the term "Collateral" for purposes of this Agreement specifically excludes all permanent fixtures and real estate owned by Company, whether or not such permanent fixtures and real estate constitute part of the Premises (defined below).

C. All or some of the Collateral is now or from time to time hereafter may be located at the premises known as Wichita Mid-Continent Airport (the "**Premises**"), which Premises are owned or operated by Property Owner and occupied by Company.

D. The Premises are owned or operated by Property Owner as an airport serving the general public and the Collateral is used in connection with the operation of such airport and more specifically ingress and egress from and to aircraft from gates owned by or leased to the Company by Property Owner.

E. Secured Party has required the Company to obtain from Property Owner an executed copy of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Property Owner waives each and every right which Property Owner now has or hereafter may have, under the laws of the State of **Kansas** or any other law or by virtue of any contract, or by virtue of Company's occupation of the Premises, to claim or assert any lien, right, claim or title to any or all of the Collateral, which now or hereafter may be, or may be located, on said Premises. Secured Party and Property Owner hereby agree that the provisions of this

Section 1 are made in favor, and shall inure to the benefit, of only Secured Party and its successors and assigns, and to no other persons.

2. Property Owner recognizes and acknowledges that Secured Party's security interest in the Collateral is superior to any lien, right or claim of title of any nature which Property Owner now has or hereafter may have or assert in or to the Collateral by statute, any agreement or otherwise. Property Owner acknowledges that Company currently has the right to use the gates at which the Loading Bridges are currently located and that to the Property Owner's knowledge, that the Company is in material compliance with the terms and conditions of any and all agreements between Company and Property Owner related to the Loading Bridges and that Property Owner has no right or option to acquire the Loading Bridges from Company pursuant to any agreement between Property Owner and Company or under the rules and regulations governing the ownership or use of the Loading Bridges at the Premises.

3. Property Owner agrees that in the event of any default by Company of any payment or other obligations owing to Property Owner by Company, Property Owner will make a commercially reasonable effort to notify Company and Secured Party of any such default.

4. In the event of default by Company in the payment of any Obligations of Company to Secured Party giving rise to Secured Party having the right to exercise remedies against the Company as set forth in the Security Agreement, Property Owner (i) will cooperate with Secured Party in its efforts to assemble all of the Collateral located on the Premises, (ii) will permit Secured Party to remove the Collateral from the Premises without any payment or remuneration to the Property Owner and (iii) will not hinder Secured Party's actions in enforcing its security interest in the Collateral. In connection with the taking of any such action, Secured Party agrees that all such steps and actions will be (x) consistent with and recognize the needs of Property Owner with respect to the movement of aircraft and customers of the Company and Property Owner so long as the security interest of Secured Party in the Collateral is not materially diminished or otherwise materially restricted or hindered, and (y) exercised in conformity with rules and regulations of applicable federal agencies, including but not limited to the Federal Aviation Administration and the Department of Homeland Security and their successors, and such other rules, regulations, and procedures as may be adopted from time to time by the Property Owner in the interest of safety and airport efficiency for all users thereof.

5. Secured Party may, without affecting the validity of this Agreement, extend, amend or in any way modify the terms of payment of any Obligations, without the consent of Property Owner and without giving notice thereof to Property Owner.

6. If, for any reason whatsoever, Property Owner either deems itself entitled to redeem or to take possession of the Premises while Company still occupies the Premises, Property Owner will notify Secured Party at least thirty (30) days before taking such action.

7. Secured Party may, in accordance with the Security Agreement, without any charge for rent, enter upon the Premises to inspect the Collateral located on the Premises, subject to any rules, regulations and procedures as may be adopted from time to time by the Property Owner in the interest of safety and airport efficiency for all users thereof and subject to any rules, regulations and procedures as may be adopted from time to time by applicable federal agencies,

including but not limited to the Federal Aviation Administration and the Department of Homeland Security and their successors. Secured Party agrees that all such inspections will be consistent with and recognize the needs of Property Owner with respect to the operation of the Premises and the movement of aircraft and customers of the Company and Property Owner.

8. This Agreement shall inure to the benefit of the successors and assigns of Secured Party and shall be binding upon the heirs, personal representatives, successors and assigns of Property Owner.

9. This Agreement shall continue in force until the termination of the security interest granted to Secured Party pursuant to the Security Agreement.

10. All notices, requests, demands and other communications provided for hereunder shall be in writing and addressed as follows:

To Property Owner:	Wichita Airport Authority Wichita Mid-Continent Airport 2173 Air Cargo Road Wichita, KS 67209 Attn: Director of Airports Facsimile: 316-946-4793
To the Company:	United Air Lines, Inc. 77 W. Wacker Drive Chicago, IL 60601 Attn: Vice President-Corporate Real Estate Facsimile: 312-997-8118
To the Secured Party:	223 S. Wacker LLC 8114 North Lawndale Avenue Skokie, Illinois 60076 Attn: John M. Huston Facsimile: _____
With copy to:	223 S. Wacker LLC 404 Fifth Avenue, 4th Floor New York, New York 10018 Attn: President Facsimile: _____
With copy to:	Office of the Building 233 South Wacker Drive, Suite 3530 Chicago, Illinois 60606 Attn: Building Manager Facsimile: _____

With copy to:

Much Shelist
191 N. Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attn: Harold Dembo
Fax: (312) 521-2100

or, as to each party, at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this subsection. All notices addressed as above shall be deemed to have been properly given (i) if served in person, upon acceptance or refusal of delivery; (ii) if mailed by certified or registered mail, return receipt requested, postage prepaid, on the third (3rd) day following the day such notice is deposited in any post office station or letter box; (iii) if sent by recognized overnight courier, on the first (1st) day following the day such notice is delivered to such carrier; or (iv) if sent by facsimile, upon confirmation of receipt of a facsimile transmission.

[The remainder of this page was intentionally left blank. Signature page follows]

IN WITNESS WHEREOF, this Collateral Access Agreement is entered into as of the date first set forth above.

PROPERTY OWNER:

ATTEST:

THE WICHITA AIRPORT AUTHORITY

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President

By: _____
Victor D. White, A.A.E.,
Director of Airports

COMPANY:

UNITED AIR LINES, INC.

By: _____

Name: _____

Title: _____

SECURED PARTY:

233 S. WACKER LLC

By: _____

Name: _____

Title: _____

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL APRIL 13, 2010**

- a. 47th, Lulu to Hydraulic (KDOT/ARRA) (47th, west of Hydraulic) (KA-1006-04/472-84872/ 991306/636227/991306/779616) See Special Provisions. (District III) - \$1,200,000.00
- b. 2010 Contract Maintenance Natural Latex Modified Micro-Surfacing (north of 63rd Street South, east of 135th Street West) (472-84559/132723/620552/133116/) Traffic to be maintained using flagpersons and barricades. (District I,II,III,IV,V,VI) - \$849,400.00

City of Wichita
City Council Meeting
April 13, 2010

TO: Mayor and City Council

SUBJECT: Street Paving in Cedar View Village Addition (east of Greenwich, south of Kellogg (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendations: Adopt the resolution.

Background: On October 7, 2008, the City Council approved a petition for street paving in Cedar View Village Addition. The authorizing resolution contained an error in referencing a previous resolution. A resolution has been prepared to correct the error.

Analysis: The project serves new residential development.

Financial Considerations: The approved project budget of \$206,000 is unaffected.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing paving improvements required for new residential development.

Legal Considerations: State Statutes provide the City Council authority to correct the error by resolution.

Recommendation/Actions: It is recommended that the City Council adopt the resolution and authorize the necessary signatures.

Attachments: Resolution.

RESOLUTION NO. 10-093

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING PAVEMENT ON BRISTOL CIRCLE; REMOVAL OF EXISTING PAVEMENT ON AND ADJACENT TO LOTS 7 AND 8 BLOCK 1; NEW PAVEMENT FROM THE NORTH LINE OF LINCOLN STREET TO A POINT 580' NORTH OF LINCOLN STREET CONNECTING TO EXISTING PAVEMENT; CONSTRUCTION OF A CUL-DE-SAC AND EMERGENCY VEHICLE ACCESS GATE AT THE WEST END ADJACENT TO LOT 12, BLOCK 1 AND LOTS 1 AND 2, BLOCK 2; AND CONSTRUCTION OF AN EYEBROW ADJACENT TO LOTS 4 THROUGH 6, BLOCK 2 (EAST OF GREENWICH, SOUTH OF KELLOGG) 472-84637 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING PAVEMENT ON BRISTOL CIRCLE; REMOVAL OF EXISTING PAVEMENT ON AND ADJACENT TO LOTS 7 AND 8 BLOCK 1; NEW PAVEMENT FROM THE NORTH LINE OF LINCOLN STREET TO A POINT 580' NORTH OF LINCOLN STREET CONNECTING TO EXISTING PAVEMENT; CONSTRUCTION OF A CUL-DE-SAC AND EMERGENCY VEHICLE ACCESS GATE AT THE WEST END ADJACENT TO LOT 12, BLOCK 1 AND LOTS 1 AND 2, BLOCK 2; AND CONSTRUCTION OF AN EYEBROW ADJACENT TO LOTS 4 THROUGH 6, BLOCK 2 (EAST OF GREENWICH, SOUTH OF KELLOGG) 472-84637 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-69 adopted on December 4, 2007 and Resolution No. 08-482 adopted on October 7, 2008 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Bristol Circle; removal of existing pavement on and adjacent to Lots 7 and 8 Block 1; new pavement from the north line of Lincoln Street to a point 580' north of Lincoln Street connecting to existing pavement; construction of a cul-de-sac and emergency vehicle access gate at the west end adjacent to Lot 12, Block 1 and lots 1 and 2, Block 2; and construction of an eyebrow adjacent to Lots 4 through 6, Block 2 (east of Greenwich, south of Kellogg) 472-84637.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 1 hereof is estimated to Two Hundred Six Thousand Dollars (\$206,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after November 1, 2007 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

CEDAR VIEW VILLAGE ADDITION

Lots 1 through 12, Block 1

Lots 1 through 17, Block 2

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 5, Block 1; and Lots 12 through 17, Block 2; CEDAR VIEW VILLAGE ADDITION, shall each pay 212/10,000 of the total cost payable by the improvement district. Lots 6 through 12, Block 1; and Lots 1 through 11, Block 2, CEDAR VIEW VILLAGE ADDITION, shall each pay 426/10,000 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 13th day of April, 2010.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

CITY OF WICHITA
City Council Meeting
April 13, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land along the Northwest Corner of Willow Lake Road and SW 60th Street for the Integrated Local Water Supply Plan (Harvey County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, the City Council approved the project and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River. It is then transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. From the site at the northwest corner of Willow Lake Road and SW 60th Street, it is necessary to acquire three well sites consisting of 4.35 acres together with 2.17 acre permanent pipeline easement along Willow Lake Road. During construction, a 3.65 acre temporary easement is also required. The site is improved for agricultural purposes and is flood irrigated. The crops within the easements will be impacted during construction.

Analysis: The seller has agreed to convey the required well sites and easements for the estimated market value offer of \$45,473. This amount is comprised of \$14,268 (or \$3,280 an acre) for the 4.35-acre well sites; \$4,340 (or \$2,000 an acre) for the 2.17-acre pipeline easement; \$1,460 (or \$400 an acre) for the 3.65-acre temporary easement; and \$25,405 for crop damages, land leveling and tailwater drainage reconstruction.

Financial Considerations: A budget of \$47,223 is requested; this includes \$45,473 for the acquisition, \$1,750 for title work, title insurance, closing costs and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million.

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Real estate purchase agreement, easement agreement, tract maps and area map.

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 2 day of March, 2010 by and between The Stutzman Family Trust dated November 1, 1993, The John H. Stutzman Trust dated January 7, 1985, The Carol J. Franks Trust dated January 7, 1985, The Carol J. Franks Irrevocable Trust No. 1 dated May 10, 1985, John E. Korb and Cynthia S. Korb, Husband and Wife, Steven R. Dawson and Kathy Janelle Dawson, Husband and Wife, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Statutory Warranty Deed of the following described real property, situated in Harvey County, Kansas, to wit:

The North 205 feet of the South 345 feet of the East 267 feet of the East Half (E/2) of the Northeast Quarter (NE/4) of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th Principal Meridian in Harvey County, Kansas; containing 1.26 Acres, more or less, including existing road right-of-way;

AND

The South 305 feet of the East 232 feet of the Southeast Quarter (SE/4) of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th Principal Meridian in Harvey County, Kansas; containing 1.62 Acres, more or less, including existing road right-of-way;

AND

The South 231 feet of the West 278 feet of the Southeast Quarter (SE/4) of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th Principal Meridian in Harvey County, Kansas; containing 1.47 Acres, more or less, including existing road right-of-way.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Fourteen Thousand Two Hundred Sixty-eight Dollars and No Cents (\$14,268.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, any and all damages including but not limited to severance, crops exceeding current crop, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before March 31, 2010.
6. The Seller further agrees to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they are now, reasonable wear and tear excepted.
7. Possession to be given to Buyer on date of closing.
8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.
9. Seller hereby agrees that damages arising, if any, to the remainder property during construction are to be addressed by filing a claim with the Buyer, City of Wichita, Kansas, City Clerk's Office. 455 North Main, Wichita, KS 67202. (316)268-4529.
10. Site Assessment
 - A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
 - B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.
 - C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.
11. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to closing shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.
12. Paragraphs 9 and 11 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Donald M. Stutzman
Donald M. Stutzman, Trustee
The Stutzman Family Trust dated
November 1, 1993

SEE PG 4 OF 9

John H. Stutzman, Co-Trustee
The John H. Stutzman Trust dated
January 7, 1985

SEE PG 5 OF 9

Debora L. Easterday, Co-Trustee
Carol J. Franks Trust
dated January 7, 1985

SEE PG 5 OF 9

Debora L. Easterday, Trustee
Carol J. Franks Irrevocable Trust No. 1
dated May 10, 1985

SEE PG 7 OF 9

Cynthia S. Korb, Wife

SEE PG 8 OF 9

Kathy Janelle Dawson, Wife

Lula Bell Stutzman
Lula Bell Stutzman, Trustee
The Stutzman Family Trust dated
November 1, 1993

SEE PG 7 OF 9

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The John H. Stutzman Trust dated
January 7, 1985

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Carol J. Franks Trust
dated January 7, 1985

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Carol J. Franks Irrevocable Trust No. 1
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SEE PG 8 OF 9

Steven R. Dawson, Husband

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Nancy Dawson POA

SEE PG 8 OF 9

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SEE PG 8 OF 9

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SEE PG 7 OF 9

John E. Korb, Husband

Kathy Janelle Dawson

Kathy Janelle Dawson, Wife

Steven R. Dawson

Steven R. Dawson, Husband

BUYER:

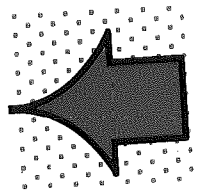
Carl Brewer, Mayor

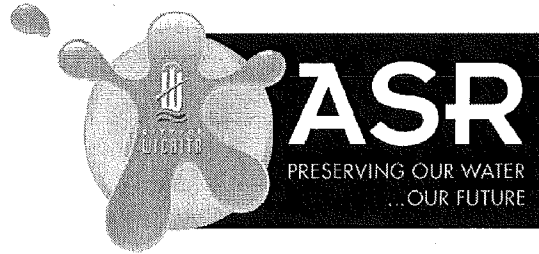
ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

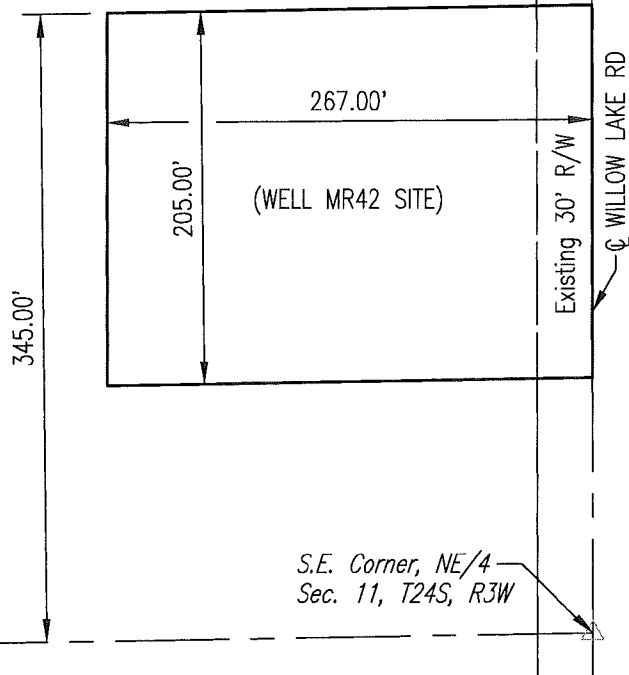




E/2, NE/4
SECTION 11

Existing City of Wichita
5 Acre Well Site Easement (MR42)

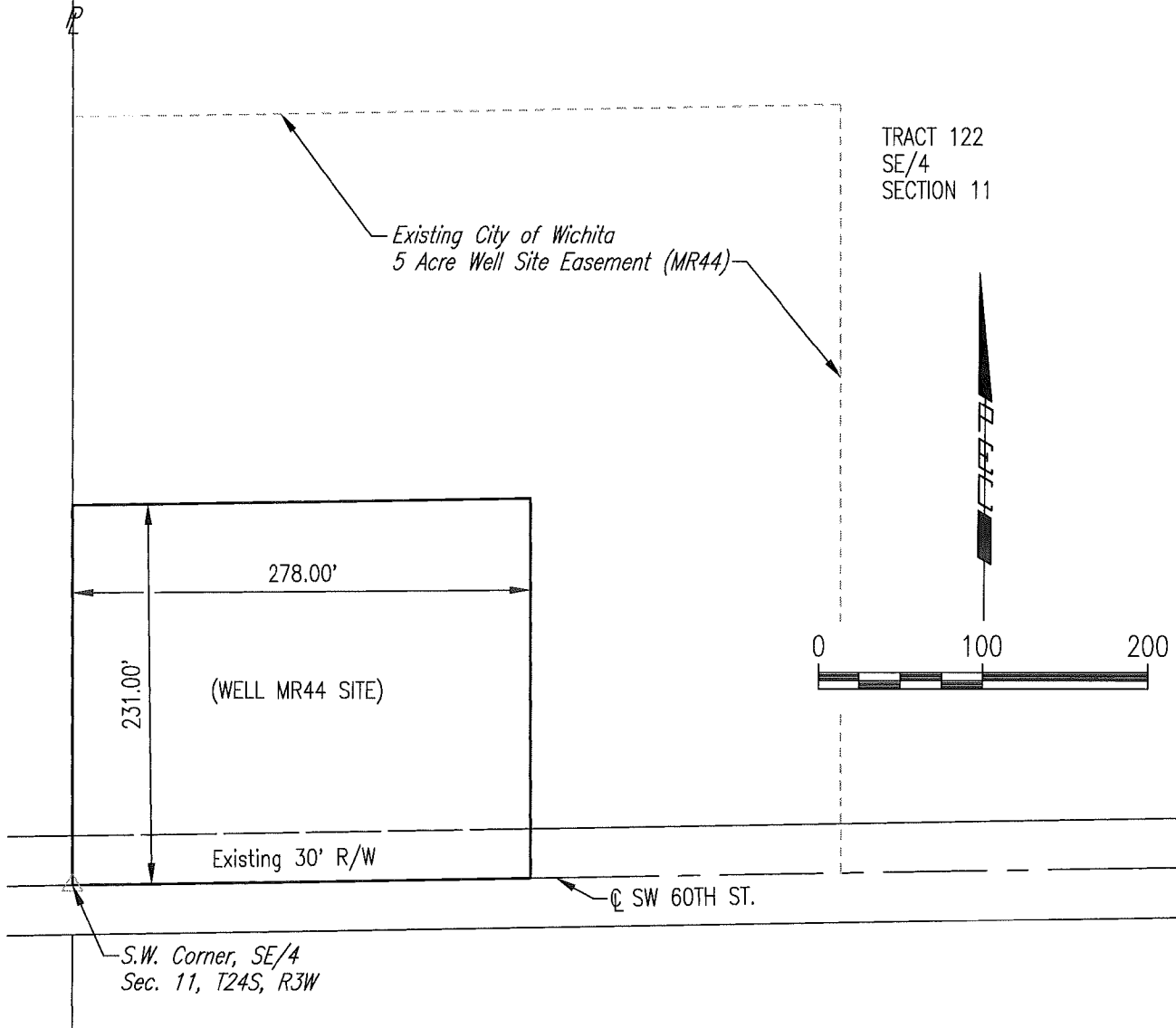
TRACT 122



S.E. Corner, NE/4
Sec. 11, T24S, R3W

OWNER:
Stutzman Family

Tract 122 (MR42)
The North 205 feet of the South 345 feet of the East 267 feet of the East Half (E/2) of the Northeast Quarter (NE/4) of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th Principal Meridian in Harvey County, Kansas; containing 1.26 Acres, more or less, including existing road right-of-way.

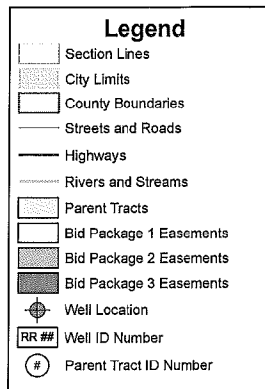


OWNER:
Stutzman Family

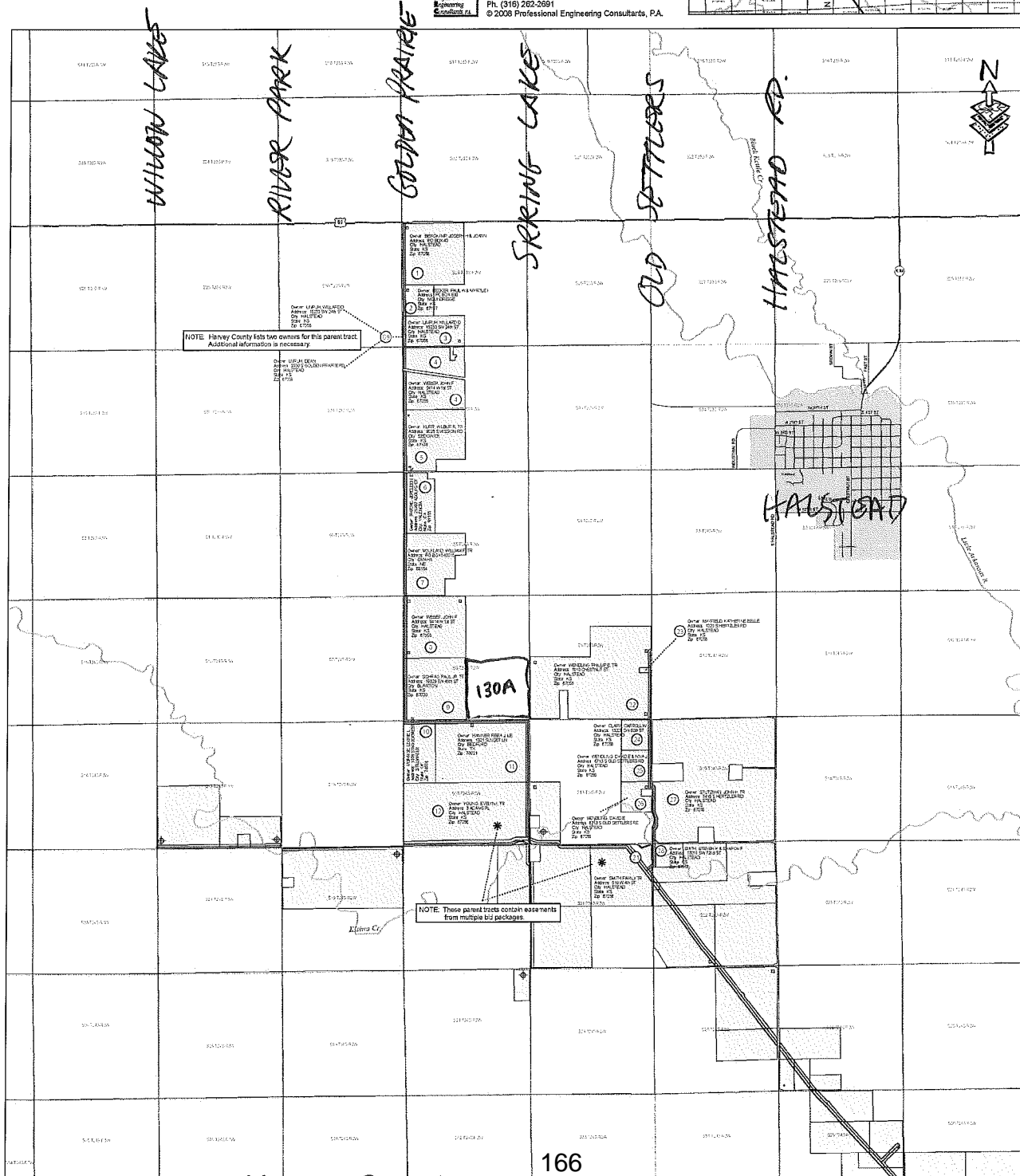
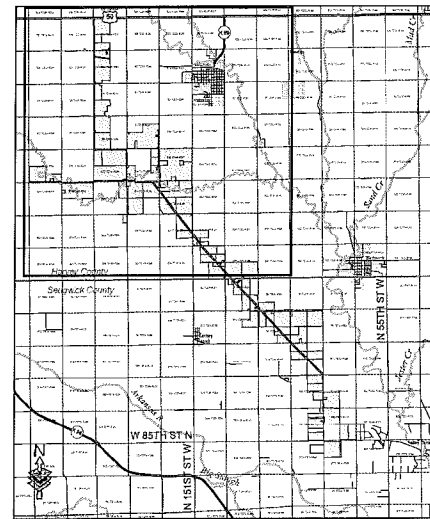
Tract 122 (MR44)
The South 231 feet of the West 278 feet of the Southeast Quarter (SE/4)
of Section Eleven (11), Township Twenty-four (24) South, Range Three (3)
West of the 6th Principal Meridian in Harvey County, Kansas; containing
1.47 Acres, more or less, including existing road right-of-way.



BID PACKAGE 3 Property Acquisition Map



Q:\2007\07685\Brent\Project GIS\ASR Bid Package2 Easements.mxd
Last saved 2/22/2009 by SAD
NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
Projection: Lambert_Conformal_Conic
Professional Engineering Consultants, P.A.
303 S. Topeka
Wichita, KS 67202
Ph: (316) 262-2991
© 2008 Professional Engineering Consultants, P.A.



EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 2 day of March, 2010 by and between The Stutzman Family Trust dated November 1, 1993, The John H. Stutzman Trust dated January 7, 1985, The Carol J. Franks Trust dated January 7, 1985, The Carol J. Franks Irrevocable Trust No. 1 dated May 10, 1985, John E. Korb and Cynthia S. Korb, Husband and Wife, Steven R. Dawson and Kathy Janelle Dawson, Husband and Wife, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") All of the West 30 feet of the East 60 feet of the Southeast Quarter of Section Eleven (11), Township Twenty-Four (24) South, Range Three (3) West of the 6th PM, Harvey Conty, Kansas, EXCEPT 5 acres in square form in the Southeast corner of said Southeast Quarter as conveyed to the City of Wichita by the Indenture of Conveyance document recorded in Deed Book 104 at Page 538 in the records of Harvey County, Kansas.

AND ALSO, All of the West 30 feet of the East 60 feet of the following described tract; The East Half of the Northeast Quarter of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas, EXCEPT: Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-Four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas for a point of beginning; thence West 330 feet; thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning; AND ALSO EXCEPT; A tract of land in the East Half of the Northeast Quarter of Section Eleven (11). Township Twenty-Four (24) South, Range Three (3) West of the 6th PM. Harvey County, Kansas, said tract lying approximately 25 feet Northeasterly of the East side of a creek running Northeast to Southwest, more particularly described as follows: Beginning at the Northeast corner of said East Half of the Northeast Quarter; thence along the East line of said Northeast Quarter on a Kansas South Zone Grid. Bearing of South 00°19'37" East for 893.85 feet; thence South 89°40'23" West for 30.00 feet to a point approximately 25 feet Northeast of the East bank of said creek; thence continuing for the next eleven courses approximately 25 feet from the East edge of said creek. North 52°30'06" West for 60.39 feet; thence North 81°02'21" West for 164.18 feet; thence North 60°00'03" West for 64.96 feet; thence North 36°30'31" West for 78.34 feet; thence North 53°28'15" West for 83.05 feet; thence North 36°03'51" West for 79.31 feet; thence North 30°59'27" West for 58.37 feet; thence North 44°24'18" West for 56.91 feet; thence North 62°21'40" West for 146.74 feet; thence North 47°11'35" West for 146.07 feet; thence parallel with the East line of said Northeast Quarter North 00°19'37" West for 353.12 feet to a point of approximately 25 feet East of East edge of said creek and on the North line of said Northeast Quarter; thence along the North line of said Northeast Quarter North 89°07'47" East for 760.41 feet to the point of beginning. AND ALSO EXCEPT 5 acres in square form in the Southeast corner of said Northeast Quarter as conveyed to the City of Wichita by the Indenture of Conveyance document recorded in Deed Book 104 at Page 538 in the records of Harvey County,

Kansas. The described easement contains 2.17 acres, more or less.

Temporary Easement (Construction – Parcel “B”) All of the West 50 feet of the East 110 feet of the Southeast Quarter of Section Eleven, Township Twenty-four South, Range Three West of the 6th PM, Harvey County, Kansas, EXCEPT 5 acres in square form in the Southeast corner of said Southeast Quarter as conveyed to the City of Wichita by the Indenture of Conveyance document recorded in Deed Book 104 at Page 538 in the record of Harvey County, Kansas.

AND ALSO, All of the West 50 feet of the East 110 feet of the following described tract; The East Half (E/2) of the Northeast Quarter (NE/4) of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas, EXCEPT: Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas for a point of beginning; thence West 330 feet; thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning; AND ALSO EXCEPT; A tract of land in the East Half (E/2) of the Northeast Quarter (NE/4) of Section Eleven (11). Township Twenty-four (24) South, Range Three (3) West of the 6th PM. Harvey County, Kansas, said tract lying approximately 25 feet Northeasterly of the East side of a creek running Northeast to Southwest, more particularly described as follows: Beginning at the Northeast corner of said East Half of the Northeast Quarter; thence along the East line of said Northeast Quarter on a Kansas South Zone Grid. Bearing of South 00°19'37" East for 893.85 feet; thence South 89°40'23" West for 30.00 feet to a point approximately 25 feet Northeast of the East bank of said creek; thence continuing for the next eleven courses approximately 25 feet from the East edge of said creek. North 52°30'06" West for 60.39 feet; thence North 81°02'21" West for 164.18 feet; thence North 60°00'03" West for 64.96 feet; thence North 36°30'31" West for 78.34 feet; thence North 53°28'15" West for 83.05 feet; thence North 36°03'51" West for 79.31 feet; thence North 30°59'27" West for 58.37 feet; thence North 44°24'18" West for 56.91 feet; thence North 62°21'40" West for 146.74 feet; thence North 47°11'35" West for 146.07 feet; thence parallel with the East line of said Northeast Quarter North 00°19'37" West for 353.12 feet to a point approximately 25 feet East of East edge of said creek and on the North line of said Northeast Quarter; thence along the North line of said Northeast Quarter North 89°07'47" East for 760.41 feet to the point of beginning. AND ALSO EXCEPT 5 acres in square form in the Southeast corner of said Northeast Quarter as conveyed to the City of Wichita by the Indenture of Conveyance document recorded in Deed Book 104 at Page 538 in the records of Harvey County, Kansas. The described easement contains 3.65 acres, more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum Thirty-one Thousand Two Hundred Five Dollars and No Cents (\$31,205.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

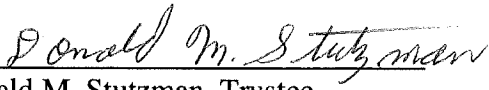
4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before March 31, 2010.
6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.
7. Possession to be given to Buyer on date of closing.
8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.
9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.
10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.
11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.
12. Site Assessment
 - A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
 - B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.
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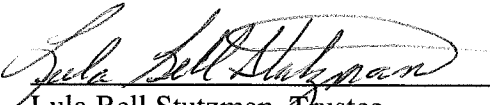
13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

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November 1, 1993


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13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

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Carol J. Franks Trust
dated January 7, 1985

Debora L. Easterday, Trustee
Carol J. Franks Irrevocable Trust No. 1
dated May 10, 1985

Carol J. Franks
Carol J. Franks, Trustee
Carol J. Franks Irrevocable Trust No. 1
dated May 10, 1985

Cynthia S. Korb, Wife

John E. Korb, Husband

Kathy Janelle Dawson, Wife

Steven R. Dawson, Husband

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Donald M. Stutzman, Trustee
The Stutzman Family Trust dated
November 1, 1993

Lula Bell Stutzman, Trustee
The Stutzman Family Trust dated
November 1, 1993

John H. Stutzman, Co-Trustee
The John H. Stutzman Trust dated
January 7, 1985

Cynthia S. Korb
Cynthia S. Korb, Co-Trustee
The John H. Stutzman Trust dated
January 7, 1985 *Nancy Duranson POA*

Debora L. Easterday, Co-Trustee
Carol J. Franks Trust
dated January 7, 1985

Carol J. Franks, Co-Trustee
Carol J. Franks Trust
dated January 7, 1985

Debora L. Easterday, Trustee
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Cynthia S. Korb, Wife
Nancy Duranson POA

John E. Korb
John E. Korb, Husband
Nancy Duranson POA

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November 1, 1993

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January 7, 1985

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Carol J. Franks Trust
dated January 7, 1985

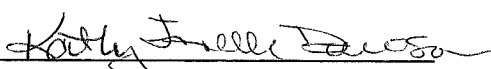
Carol J. Franks, Co-Trustee
Carol J. Franks Trust
dated January 7, 1985

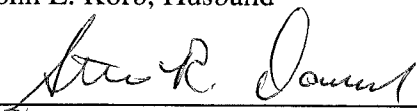
Debora L. Easterday, Trustee
Carol J. Franks Irrevocable Trust No. 1
dated May 10, 1985

Carol J. Franks, Trustee
Carol J. Franks Irrevocable Trust No. 1
dated May 10, 1985

Cynthia S. Korb, Wife

John E. Korb, Husband


Kathy Janelle Dawson, Wife


Steven R. Dawson, Husband

BUYER:

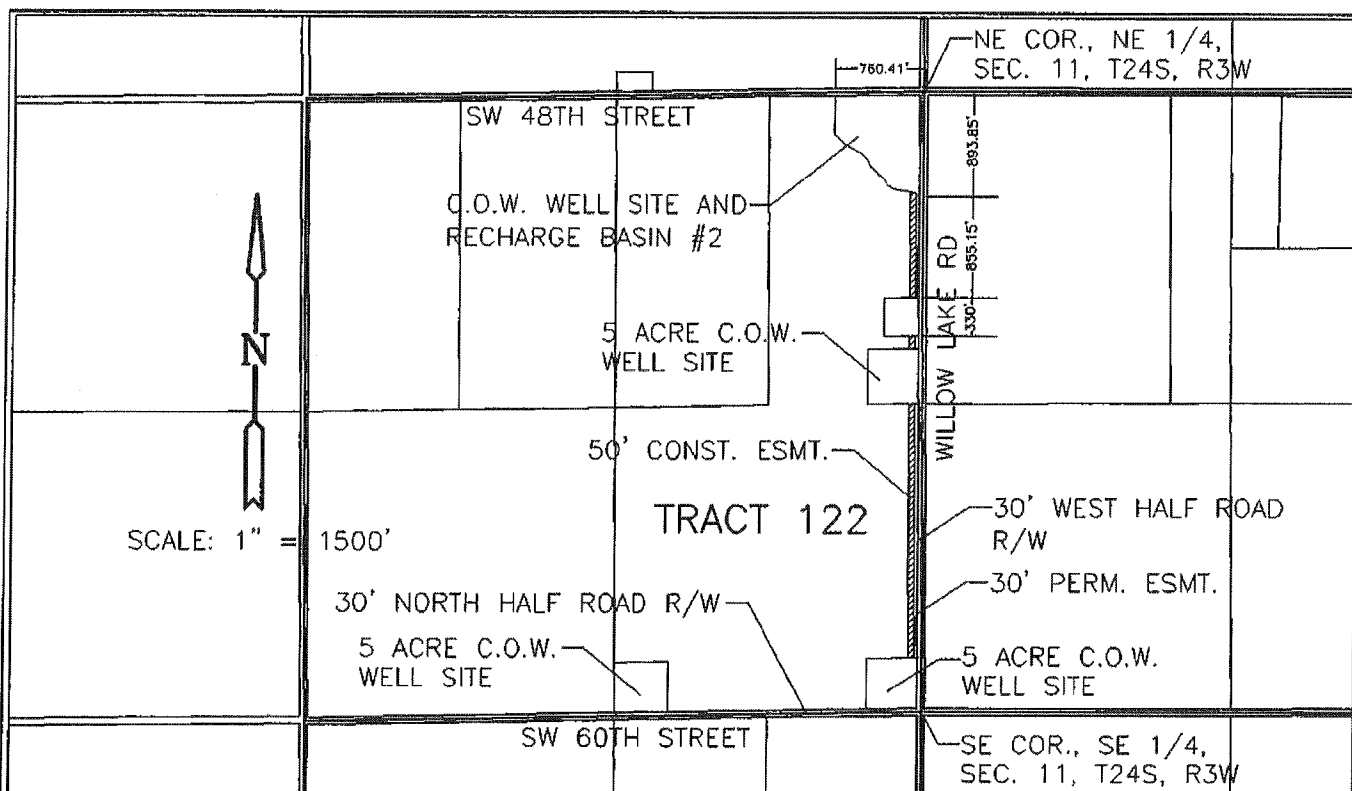
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law



EASEMENT:

All of the West 30 feet of the East 60 feet of the Southeast Quarter of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas, EXCEPT 5 acres in square form in the Southeast corner of said Southeast Quarter as conveyed to the City of Wichita by the Indenture of Conveyance document recorded in Deed Book 104 at Page 538 in the records of Harvey County, Kansas.



AND ALSO, All of the West 30 feet of the East 60 feet of the following described tract;

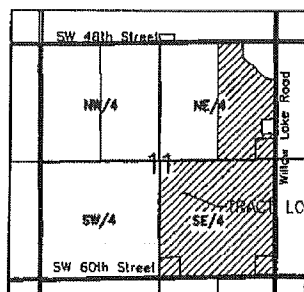
The East Half of the Northeast Quarter of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas, EXCEPT: Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas for a point of beginning; thence West 330 feet; thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning; AND ALSO EXCEPT: A tract of land in the East Half of the Northeast Quarter of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas, said tract lying approximately 25 feet Northeasterly of the East side of a creek running Northeast to Southwest, more particularly described as follows: Beginning at the Northeast corner of said East Half of the Northeast Quarter; thence along the East line of said Northeast Quarter on a Kansas South Zone Grid. Bearing of South 00°19'37" East for 893.85 feet; thence South 89°40'23" West for 30.00 feet to a point approximately 25 feet Northeast of the East bank of said creek; thence continuing for the next eleven courses approximately 25 feet from the East edge of said creek. North 52°30'06" West for 60.39 feet; thence North 81°02'21" West for 164.18 feet; thence North 60°00'03" West for 64.96 feet; thence North 36°30'31" West for 78.34 feet; thence North 53°28'15" West for 83.05 feet; thence North 36°03'51" West for 79.31 feet; thence North 30°39'27" West for 58.37 feet; thence North 44°24'18" West for 56.91 feet; thence North 62°21'40" West for 146.74 feet; thence North 47°11'35" West for 146.07 feet; thence parallel with the East line of said Northeast Quarter North 00°19'37" West for 353.12 feet to a point of approximately 25 feet East of East edge of said creek and on the North line of said Northeast Quarter; thence along the North line of said Northeast Quarter North 89°07'47" East for 760.41 feet to the point of beginning. AND ALSO EXCEPT 5 acres in square form in the Southeast corner of said Northeast Quarter as conveyed to the City of Wichita by the Indenture of Conveyance document recorded in Deed Book 104 at Page 538 in the records of Harvey County, Kansas. The described easement contains 2.17 acres, more or less.

OWNER:

STUTZMAN FAMILY TR.; JOHN H. STUTZMAN TR.;
CAROL J. FRANKS TR.; CAROL J. FRANKS IRR. TR.
NO. 1; KORB, CYNTHIA S.; DAWSON, KATHY J.;
MARION C. STUTZMAN RE. TR.

LEGEND:

-  Construction Easement
-  Easement



VICINITY MAP




THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

SW 72ND TRANSMISSION MAIN
PROJECT NAME

TRACT 122
SHEET TITLE

JGP MLT WPF
DESIGN BY DRAWN BY CHECKED BY:

SEPTEMBER 2009 788013 1 / 2
DATE JOB NO. SHEET / OF

Comp. Design & Admin
300 Riverway, Ste. 100
Wichita, KS 67203
Tel: (316) 695-9100
www.asr.com • engineering • construction • operations

PER & ASSOCIATES, INC.
CONSULTING ENGINEERS

CONSTRUCTION EASEMENT:

All of the West 50 feet of the East 110 feet of the Southeast Quarter of Section Eleven, Township Twenty-four South, Range Three West of the 6th PM, Harvey County, Kansas, EXCEPT 5 acres in square form in the Southeast corner of said Southeast Quarter as conveyed to the City of Wichita by the Indenture of Conveyance document recorded in Deed Book 104 at Page 538 in the records of Harvey County, Kansas.

AND ALSO, All of the West 50 feet of the East 110 feet of the following described tract;

The East Half (E/2) of the Northeast Quarter (NE/4) of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas, EXCEPT: Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas for a point of beginning; thence West 330 feet; thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning; AND ALSO EXCEPT; A tract of land in the East Half (E/2) of the Northeast Quarter (NE/4) of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas, said tract lying approximately 25 feet Northeasterly of the East side of a creek running Northeast to Southwest, more particularly described as follows: Beginning at the Northeast corner of said East Half of the Northeast Quarter; thence along the East line of said Northeast Quarter on a Kansas South Zone Grid. Bearing of South 00°19'37" East for 893.85 feet; thence South 89°40'23" West for 30.00 feet to a point approximately 25 feet Northeast of the East bank of said creek; thence continuing for the next eleven courses approximately 25 feet from the East edge of said creek. North 52°30'06" West for 60.39 feet; thence North 81°02'21" West for 164.18 feet; thence North 60°00'03" West for 64.96 feet; thence North 36°30'31" West for 78.34 feet; thence North 53°28'15" West for 83.05 feet; thence North 36°03'51" West for 79.31 feet; thence North 30°59'27" West for 58.37 feet; thence North 44°24'18" West for 56.91 feet; thence North 62°21'40" West for 146.74 feet; thence North 47°11'35" West for 146.07 feet; thence parallel with the East line of said Northeast Quarter North 00°19'37" West for 353.12 feet to a point of approximately 25 feet East of East edge of said creek and on the North line of said Northeast Quarter; thence along the North line of said Northeast Quarter North 89°07'47" East for 760.41 feet to the point of beginning, AND ALSO EXCEPT 5 acres in square form in the Southeast corner of said Northeast Quarter as conveyed to the City of Wichita by the Indenture of Conveyance document recorded in Deed Book 104 at Page 538 in the records of Harvey County, Kansas. The described easement contains 3.65 acres, more or less.



CDM

Camp Dresser & McKee
210 Riverway, Ste. 600
Wichita, KS 67202
Tel (316) 833-6700

consulting • engineering • construction • operations



PER & ASSOCIATES, INC.
CONSULTING ENGINEERS

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

SW 72ND TRANSMISSION MAIN

PROJECT NAME

TRACT 122

SHEET TITLE

JGP

DESIGN BY

MLT

DRAWN BY

WPF

CHECKED BY

SEPTEMBER 2009

DATE

788013

JOB NO.

2 / 2

SHEET / OF

City of Wichita
City Council Meeting
April 13, 2010

TO: Mayor and City Council

SUBJECT: Purchase Option (McCormick Armstrong, Co.) (District I)

INITIATED BY: Urban Development Office

AGENDA: Consent Agenda

Recommendation: Adopt the Resolution.

Background: On August 3, 1999, the City Council approved the issuance of Industrial Revenue Bonds, Series VII, 1999 in the amount not to exceed \$2,300,000 to McCormick Armstrong, Co. to finance the acquisition of machinery and equipment in the printing facility located at 1501 East Douglas in Downtown Wichita. McCormick Armstrong, founded in 1901, is among the largest commercial print product manufacturers in Kansas. McCormick Armstrong provides complete digital prepress workflow, high-quality web and sheet fed commercial and contract printing, digital printing, fulfillment services, mailing and complex distribution for production of advertising, catalogs, short-run publications, calendars, etc. The company is privately owned by E. W. Armstrong and family.

Under the provisions of the 1999 Lease Agreement for the bond series, McCormick Armstrong has the option, if all outstanding bonds have been paid, to purchase the equipment from the City of Wichita for the sum of \$1,000. The company is now requesting approval to exercise the purchase option.

Analysis: Under the terms of the Lease, the City is required to convey the property securing the IRB issue to the Tenant, once the Tenant has paid the purchase price and other considerations as listed under the provisions of the Lease Agreement, including the payment of all outstanding bonds.

Financial Considerations: The purchase price is \$1,000 and other considerations as listed under the provision of the Lease Agreement and Indenture to redeem and retire or defease all outstanding bonds. This price includes without limitations, principal, interest, redemption premium, and all other expenses of redemption, and trustee fees, but after the deduction of any amounts described and provided for in the Lease Agreement and available for such redemption.

Goal Impact: Economic Vitality and Affordable Living. Cooperating with the Tenant and Trustee on IRB issues is a necessary part of preserving the credibility and integrity of the City's IRB program for future projects.

Legal Considerations: The City is contractually bound to convey the IRB Project property to the Tenant by Special Warranty Deed, once all the conditions established in the Lease and Indenture have been met. The City Attorney's Office has approved the form of the attached Resolution to authorize the execution of the Special Warranty Deed, Bill of Sale and the Termination of Lease Agreement (each in substantially the form attached to the Resolution).

Recommendations/Actions: It is recommended that City Council adopt the Resolution authorizing the Special Warranty Deed, Bill of Sale and the Termination of Lease Agreement for McCormick Armstrong and authorize the necessary signatures.

Attachments: Resolution, Special Warranty Deed, Termination of Lease, Bill of Sale

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that in consideration of One Thousand Dollars (\$1000) and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned, City of Wichita, Kansas, a municipal corporation (the “Grantor”), does grant, sell, transfer and deliver unto McCormick Armstrong, Co., a Kansas corporation (the “Grantee”), all of its interest in the following goods and chattels, viz:

All buildings, improvements, machinery, equipment, and other personal property purchased with the proceeds of the City of Wichita's Industrial Revenue Bonds (McCormick Armstrong, Co.) Series VII, 1999 in an aggregate principal amount of \$2,300,000.

To have and to hold, all and singular, the said goods and chattels forever. And the said Grantor hereby covenants with the said Grantee that the interest of Grantor conveyed hereby is free from all encumbrances except (i) those liens and encumbrances to which title to the described property was subject when conveyed to the Grantor, (ii) those liens and encumbrances resulting from the failure of the Grantee to perform and observe any of the agreements on its part contained in the Lease under which it has heretofore leased such property; and (iii) the restriction that no existing building nor any building which is constructed or placed upon the property conveyed hereby, either temporarily or permanently, shall be used for housing the operation of any multi-game, casino-style gambling; and that it will warrant and defend the same against the lawful claims and demands of all persons claiming through the Grantor.

IN WITNESS WHEREOF, we have hereunto set our hand and affixed the official seal of the City of Wichita, Kansas, for delivery as of the _____ day of April, 2010.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

[SEAL]

ATTEST:

Karen Sublett, City Clerk

ACKNOWLEDGMENTS

STATE OF KANSAS)
)SS:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of April, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Carl Brewer, Mayor, and Karen Sublett, City Clerk, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same on behalf of the City of Wichita, Kansas, as the free act of such City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public

My Appointment Expires:

Approved as to Form:

Gary E. Rebenstorf
Director of Law

SCHEDULE I

SCHEDULE I TO THE TRUST INDENTURE OF THE CITY OF WICHITA, KANSAS, AND THE SOUTHWEST NATIONAL BANK OF WICHITA, WICHITA, KANSAS, AS TRUSTEE, DATED AS OF AUGUST 1, 1999 AND TO THE LEASE AGREEMENT DATED AS OF AUGUST 1, 1999 BY AND BETWEEN SAID CITY AND MCCORMICK-ARMSTRONG, CO., INCORPORATED.

PROPERTY SUBJECT TO LEASE

THE PROJECT

All machinery and equipment acquired, financed or refinanced in whole or in part with the proceeds of any Bonds and constituting the "Project" as referred to in said Lease and said Indenture, and more specifically described as follows:

Heidelberg 705 Stitcher	\$ 447,200
Inkjet Mailing System	221,480
M110 Press Rehabilitation	1,372,203
Gammerler Rotary Trimmer	98,500
Electronic Control & Consol for M300 Press	100,000
Hurricane Waste Evacuation System	10,597
Heidelberg Rima Stacker	30,000
Inline Drill for Stitcher	11,000
Four Scissor Lifts	10,000

TERMINATION OF LEASE AGREEMENT

This TERMINATION OF LEASE AGREEMENT (the "Agreement") is made by and between the City of Wichita, Kansas, a municipal corporation, of Sedgwick County, Kansas (the "City"), and McCormick Armstrong Company, Inc., a Kansas corporation (the "Tenant"). Unless a definition is otherwise provided in this Agreement, the capitalized terms used in this Agreement shall have the same meanings ascribed to them in the Lease as defined below.

WITNESSETH

WHEREAS, the City has previously issued its Industrial Revenue Bonds for McCormick Armstrong Company, Inc., Series VII, 1999 in an aggregate principal amount of \$2,300,000 for the purpose of financing the acquisition of equipment for printing services (the "Bonds").

WHEREAS, the Bonds were issued pursuant to Ordinance No. 44-304 passed and approved by the governing body of the City on August 3, 1999 (the "Ordinance"); and

WHEREAS, in connection with the issuance of the Bonds, the City, as lessor (the "Issuer"), and McCormick Armstrong Company, Inc. as lessee (the "Tenant"), entered into a Lease Agreement dated as of August 1, 1999 (the "Lease"), a notice of which was filed of record at Film 1952, Page 1194 in the records of the Sedgwick County Register of Deeds;

WHEREAS, the Tenant has paid in full, all of the outstanding Bonds on or before December 31, 2009 pursuant to terms of the Ordinance; and

WHEREAS, concurrently upon the payment in full of all of the Bonds, the Tenant requests that the City convey title to the Project to Tenant following such payment and the payment of the sum of \$1,000 and all other payments required by Section 17.2 of the Lease;

NOW, THEREFORE, THE CITY DOES HEREBY STATE AND DECLARE that as of the date of delivery hereof the Lease and the Notice thereof shall terminate and be of no further force and effect. The property located in Sedgwick County, Kansas, affected by the Lease and this Termination of Lease is described in Schedule I attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties named above have caused this Termination of Lease to be duly executed in their respective names and have caused their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, as of _____.

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

[SEAL]

ATTEST:

Karen Sublett, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

On this _____ day of April, 2010 before me, the undersigned, a Notary Public in and for said State, came Carl Brewer and Karen Sublett, to me personally known to be the Mayor and City Clerk, respectively, of the City of Wichita, Kansas, and said Mayor and City Clerk acknowledged that they executed the foregoing instrument in writing as the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

[SEAL]

My Appointment Expires:

By _____

185

SCHEDULE I

SCHEDULE I TO THE TRUST INDENTURE OF THE CITY OF WICHITA, KANSAS, AND THE SOUTHWEST NATIONAL BANK OF WICHITA, WICHITA, KANSAS, AS TRUSTEE, DATED AS OF AUGUST 1, 1999 AND TO THE LEASE AGREEMENT DATED AS OF AUGUST 1, 1999 BY AND BETWEEN SAID CITY AND MCCORMICK-ARMSTRONG, CO., INCORPORATED.

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Heidelberg 705 Stitcher	\$ 447,200
Inkjet Mailing System	221,480
M110 Press Rehabilitation	1,372,203
Gammerler Rotary Trimmer	98,500
Electronic Control & Consol for M300 Press	100,000
Hurricane Waste Evacuation System	10,597
Heidelberg Rima Stacker	30,000
Inline Drill for Stitcher	11,000
Four Scissor Lifts	10,000

RESOLUTION NO. 10-094

A RESOLUTION AUTHORIZING THE CITY OF WICHITA, KANSAS, TO CONVEY CERTAIN REAL PROPERTY TO MCCORMICK ARMSTRONG COMPANY, INC., AND PRESCRIBING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, the City has previously issued its Industrial Revenue Bonds for McCormick Armstrong Company, Inc. Series VII, 1999 in an aggregate principal amount of \$2,300,000 for the purpose of financing acquisition of machinery and equipment for printing services(the "Bonds");

WHEREAS, the Bonds were issued pursuant to Ordinance No. 44-304 passed and approved by the governing body of the City on August 3, 1999 (the "Ordinance"); and

WHEREAS, in connection with the issuance of the Bonds, the City, as lessor (the "Landlord"), and McCormick Armstrong Company, Inc., as lessee (the "Lessee"), entered into a Lease Agreement dated as of August 1, 1999, (the "Lease"), a notice of which was filed of record at Film 1952, Page 1194 in the records of the Sedgwick County Register of Deeds; and

WHEREAS, the Lessee has paid in full, on or before December 31, 2009, all of the Bonds; and

WHEREAS, following the payment in full of all of the Bonds, the Developer has requested that the City convey title to the Project to McCormick Armstrong Company, Inc., following the payment of the sum of \$1,000 and all other payments required by Section 17.2 of the Lease;

WHEREAS, the City desires to convey said Project to the Lessee upon satisfaction of the conditions specified herein.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Approval of Conveyance. The conveyance by the City of the personal property described in the Bill of Sale attached hereto and incorporated herein by reference (with such technical changes in such description as may be necessary to correct or update it) is hereby approved, upon the terms and conditions set forth herein.

Section 2. Authorization of Documents. The governing body hereby authorizes and approves the Termination of Lease Agreement, attached hereto as Exhibit A, and the Special Warranty Deed, attached hereto as Exhibit B, and the Bill of Sale attached hereto as Exhibit C in substantially the forms presented to and reviewed by the governing body of the City at this meeting and attached to this

Resolution (copies of which documents shall be filed in the records of the City), with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof.

Section 3. Execution of Documents. The Mayor is hereby authorized and directed to execute the Termination of Lease Agreement, Special Warranty Deed and the Bill of Sale, and the City Clerk or Deputy City Clerk is hereby authorized and directed to attest to such documents, for and on behalf of the City.

Section 4. Delivery of Documents. The Mayor, City Clerk, or other staff of the City, is hereby authorized and directed to deliver the Termination of Lease Agreement, Special Warranty Deed and the Bill of Sale conditioned upon satisfactory evidence that the Tenant has made payment of (i) any fees due the Paying Agent; (ii) any other payments required by Section 17.2 of the Lease; and, (iii) \$1000, as required by the Lease, and an appropriate certification by the Paying Agent as to the redemption and payment of all the Bonds.

Section 5. Further Authority. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates as may be necessary to transfer the Project, terminate all interest of the City in the Project and carry out the intent of this Resolution.

ADOPTED by the governing body of the City of Wichita, Kansas, this 13th day of April, 2010.

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to Form:

Gary E. Rebenstorf, Director of Law

SCHEDULE I

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Hurricane Waste Evacuation System	10,597
Heidelberg Rima Stacker	30,000
Inline Drill for Stitcher	11,000
Four Scissor Lifts	10,000

SPECIAL WARRANTY DEED

THIS INDENTURE, made this ____ day of April, 2010, by and between the City of Wichita, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas and located in Sedgwick County, Kansas (the “Grantor”), and McCormick Armstrong Company, Inc. (the “Grantee”).

WITNESSETH: That Grantor, in consideration of the sum of One Thousand Dollars (\$1,000) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does by these presents grant, bargain, sell and convey to Grantee, its successors and assigns, all of Grantor’s interest in the property situated in Sedgwick County, Kansas, specifically described on Schedule I attached hereto and incorporated hereby.

Grantor hereby covenants that its interest as conveyed hereby is conveyed free and clear of all liens and encumbrances except (i) those liens and encumbrances to which title to the described property was subject when conveyed to Grantor; (ii) those liens and encumbrances created by the Grantee or its predecessor or to the creation or suffering of which the Grantee or its predecessor has consented; (iii) those liens and encumbrances resulting from the failure of the Grantee or its predecessor to perform and observe any of the agreements on its part contained in the Lease under which it has heretofore occupied the described property; (iv) the rights of the public in and to any part of the described property lying or being in public roads, streets, alleys or highways; (v) any unpaid taxes or assessments, general or special; (vi) the restriction that no existing building nor any building which is constructed or placed upon the property conveyed hereby, either temporarily or permanently, shall be used for housing the operation of any multi-game casino-style gambling; and (vii) the rights, titles and interests of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the described property; and further covenants that it will warrant and defend the same in the quiet and peaceable possession of Grantee, its successors and assigns, forever, against all persons claiming the same through Grantor.

IN WITNESS WHEREOF, we have hereunto set our hand and affixed the official seal of the City of Wichita, Kansas, for delivery as of the _____ day of February, 2010.

CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

[SEAL]

ATTEST:

Karen Sublett, City Clerk

ACKNOWLEDGMENTS

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this ____ day of February, 2010, before me, a notary public in and for said County and State, came Carl A. Brewer, Mayor of the City of Wichita, Kansas, a municipal corporation of the State of Kansas (the "City"), and Karen Sublett, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Appointment Expires:

Approved as to Form:

Gary E. Rebenstorf
Director of Law

SCHEDULE I

SCHEDULE I TO THE TRUST INDENTURE OF THE CITY OF WICHITA, KANSAS, AND THE SOUTHWEST NATIONAL BANK OF WICHITA, WICHITA, KANSAS, AS TRUSTEE, DATED AS OF AUGUST 1, 1999 AND TO THE LEASE AGREEMENT DATED AS OF AUGUST 1, 1999 BY AND BETWEEN SAID CITY AND MCCORMICK-ARMSTRONG, CO., INCORPORATED.

PROPERTY SUBJECT TO LEASE

THE PROJECT

All machinery and equipment acquired, financed or refinanced in whole or in part with the proceeds of any Bonds and constituting the "Project" as referred to in said Lease and said Indenture, and more specifically described as follows:

Heidelberg 705 Stitcher	\$ 447,200
Inkjet Mailing System	221,480
M110 Press Rehabilitation	1,372,203
Gammerler Rotary Trimmer	98,500
Electronic Control & Consol for M300 Press	100,000
Hurricane Waste Evacuation System	10,597
Heidelberg Rima Stacker	30,000
Inline Drill for Stitcher	11,000
Four Scissor Lifts	10,000

City of Wichita
City Council Meeting
April 13, 2010

TO: Mayor and City Council

SUBJECT: Hail Damage Partial Insurance Settlement for City Buildings (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the project.

Background: In July 2009, the down town area of the city was hit by an intense hail storm which damaged many of the City's facilities, vehicles and appurtenances. These sites include Lawrence Dumont Stadium, Wichita Ice Center, City Hall, Wichita Art Museum, Central Maintenance Facility, Fire Stations, Park facilities, Botanica, Cowtown, Transit, Water facilities and many more. Damage occurred to roofs, heating, ventilation and cooling (HVAC) units, vehicles and any equipment exposed to the elements. In September 2009 the Governor submitted a Federal Emergency Management Agency (FEMA) Declaration request to the federal government.

Analysis: FEMA has declared Wichita an eligible disaster site and the City's Risk Manager has been working with our insurance carrier, Travelers Insurance, since the event occurred to establish a claim and work towards a settlement. To date that damage is estimated close to \$5 Million with only a few sites left to re-inspect and settle. FEMA covers up to 75% and the State covers up to 10% of the costs in excess of insurance proceeds up to the deductible amount of \$1,000,000. If the City chooses not to repair a damaged facility or equipment, FEMA dollars will not apply.

Due to insurance settlement deadlines, repairs and replacements to facilities and equipment must begin immediately. To begin the repairs, a bonding resolution for the entire amount of the damages is requested. It is anticipated that all costs will be reimbursed from insurance proceeds; FEMA/State funds with any additional dollars will be transferred from the Self-Insurance Fund.

Financial Considerations: Travelers Insurance has sent the City preliminary pay vouchers amounting to \$2.3 million to begin replacement and reparations to hail damage facilities and equipment. FEMA has made payments to the City in the amount of \$69,048. As the repairs are initiated, additional payments from Travelers and FEMA/State will be forthcoming. A final report, after all damages have been repaired or replaced and all dollars have been received will be provided to the City Council.

The following tabulation summarizes the estimate of damages and an estimate of reimbursements from all sources.

July 2009 Hail Storm

Hail Damage

Insured Damages on Facilities (Estimate)	\$ 3,715,534
Insured Damages on Vehicles (Estimate)	767,771
Uninsured Vehicles Damage (Estimate)	25,000

City's Total Damages (Estimate) 4,508,305

Funding for Repairs

Insurance Reimbursement (Estimate)	3,483,305
FEMA/State Reimbursement (Estimate)	871,250
Self Insurance – Unreimbursed (Estimate)	\$ 153,750

Total Funding for Repairs 4,508,305

Goal Impact: This project addresses the Efficient Infrastructure goal to maintain and optimize public facilities and assets.

Legal Considerations: The Legal Department has approved the Resolution as to form.

Recommendations/Actions: It is recommended that the City Council approve the project, adopt the Resolution, authorize transfers as required and authorize the necessary signatures.

Attachments: Bonding Resolution
Declaration of Official Intent
Capital Improvement Authorization

CAPITAL IMPROVEMENT				
PROJECT AUTHORIZATION		USR: To Initiate Project <input checked="" type="checkbox"/> To Revise Project <input type="checkbox"/>		1. Prepare in triplicate 2. Send original & 2 copies to budget 3. City Manager to sign all copies. 4. File original w/ initiating resolution in City Clerk. 5. Return 2nd copy to initiating department. 6. Send 3rd copy to Controller.
CITY OF WICHITA				
1. Initiating Department PUBLIC WORKS	2. Initiating Division BUILDING SERVICES	3. Date	4. Project Description & Location Repairs and replacements of hail damaged roofs, HVAC units, lighting systems and vehicles at various City facilities.	
5. CIP Project Number	6. Accounting Number PROJ#135801 OCA#792810	7. CIP Project Date (Year) 2010	8. Approved by WCC	Date 8 Apr 10
9. Estimated Start Date April 8, 2010	10. Estimated Completion Date July 8, 2011	11. Project Revised August 31 1999		
12. Project Cost Estimate			12A.	
ITEM	CO	SA	OTHER	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
OTHER PARK	5,000,000			5,000,000
Totals	5,000,000			5,000,000
Total CIP Amount Budgeted	5,000,000			5,000,000
Total Prelim. Estimate				
13. Recommendation:		Authorize Purchasing Manager to execute contract		
Division Head	Department Head	Budget Officer	City Manager	
		Date	Date	

First Published in the Wichita Eagle on _____

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY ALL OR A PORTION OF THE COSTS OF REPAIRS AND REPLACEMENTS OF HAIL DAMAGED ROOFS, HVAC EQUIPMENT, LIGHTING SYSTEMS AND VEHICLES.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it is necessary to obtain additional funding for the repairs and replacements of hail damaged City facility roofs, HVAC equipment, lighting systems and vehicles.

SECTION 2. The governing body hereby declares it to be its intention to issue and sell, in the manner provided by law, general obligation bonds under the authority of K.S.A. 13-1024c, as amended by City of Wichita Charter Ordinance No. 156, to pay all or a portion of the cost of obtaining additional funding for the repairs and replacements of hail damaged City facility roofs, HVAC equipment, lighting systems and vehicles. These costs shall be paid by the issuance of general obligation bonds as aforesaid in an amount not to exceed \$5,000,000.00 exclusive of the costs of interest on borrowed money.

SECTION 3. This Resolution shall take effect and be in force from and after its passage and shall be published in the official City paper.

ADOPTED at Wichita, Kansas, this _____ day of _____, 2010.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

First Published in the Wichita Eagle on April 16, 2010

RESOLUTION NO. 10-095

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY ALL OR A PORTION OF THE COSTS OF REPAIRS AND REPLACEMENTS OF HAIL DAMAGED ROOFS, HVAC EQUIPMENT, LIGHTING SYSTEMS AND VEHICLES.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it is necessary to obtain additional funding for the repairs and replacements of hail damaged City facility roofs, HVAC equipment, lighting systems and vehicles.

SECTION 2. The governing body hereby declares it to be its intention to issue and sell, in the manner provided by law, general obligation bonds under the authority of K.S.A. 13-1024c, as amended by City of Wichita Charter Ordinance No. 156, to pay all or a portion of the cost of obtaining additional funding for the repairs and replacements of hail damaged City facility roofs, HVAC equipment, lighting systems and vehicles. These costs shall be paid by the issuance of general obligation bonds as aforesaid in an amount not to exceed \$5,000,000.00 exclusive of the costs of interest on borrowed money.

SECTION 3. This Resolution shall take effect and be in force from and after its passage and shall be published in the official City paper.

ADOPTED at Wichita, Kansas, this 13th day of April, 2010.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

DECLARATION OF OFFICIAL INTENT CERTIFICATE

Comes now Kelly Carpenter, Director of Finance for the City of Wichita, Kansas (the "City") and certifies to the following:

1. She is the duly appointed Finance Director for the City.
2. The Governing Body of the City, by resolutions adopted the 12th day of March, 1992 and the 11th day of July, 1995 (the "Resolutions"), designated and appointed the Director of Finance to act on behalf of the City in declaring the City's official intent to reimburse capital expenditures by issuance of bonds, the purpose of said designation and appointment being to ensure compliance with regulations promulgated by the United States Department of Treasury, Internal Revenue Service under authority of the Internal Revenue Code (the "Regulations").
3. The City reasonably expects to reimburse expenditures for capital improvement projects made after the date this certificate is executed that are identified and set forth herein with the proceeds of bonds to be issued hereafter.
4. This certificate is a declaration of official intent by the City under the Regulations to reimburse expenditures for capital improvement projects identified herein with proceeds from bonds to be issued hereafter.
5. The expenditures that will be made hereafter that the City intends to reimburse under authority of this certificate pertain to a capital improvement project that is described as follows:

REPAIRS AND REPLACEMENTS OF HAIL DAMAGED CITY FACILITIES, EQUIPMENT AND
VEHICLES AT VARIOUS LOCATIONS THROUGHOUT DOWN TOWN WICHITA.
PROJECT NUMBER 435801, OCA NUMBER 792811 THRU 792852

6. The maximum principal amount of debt the City expects to issue for reimbursement of expenditures made in connection with the capital improvement project described herein is \$5,000,000.00 dollars exclusive of the cost of interest of borrowed money.
7. This certificate shall upon execution be filed with the City Clerk's office and shall thereafter be kept on file in that office and shall be available for public inspection.
8. This certificate being signed and executed under oath by the Finance Director of the City on the _____ day of _____.
(month, year)

CITY OF WICHITA, KANSAS

Kelly Carpenter, Director of Finance

[illegible]

Sworn to and subscribed before me this _____ day of _____.

(month, year)

My appointment expires:

Notary Public

CITY OF WICHITA
City Council Meeting
April 13, 2010

TO: Mayor and City Council Members

SUBJECT: Acquisition by Eminent Domain of Tracts Required for the 119th Street West from Kellogg to Maple Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real properties.

Background: On August 4, 2009, the City Council approved funding to acquire right-of-way for a project to improve 119th Street West from Kellogg to Maple from two lanes with open ditches to five lanes. There will be four lanes of traffic and a center two-way turn lane. Landscaping will also be installed in the available right of way. Ditches will be replaced with a storm water sewer system and sidewalks will be built along both the east and west side of 119th. The project requires the acquisition of all or part of sixteen privately owned tracts. The project is partially funded with Federal money administered by the State. To be eligible for these funds, right of way must be acquired and certified by the end of September, 2010.

Analysis: Appraisals and review appraisals have been ordered on all tracts per Federal requirements. Once valuation is established, offers will be made on all tracts and negotiations initiated. To meet the timing for certification, at this time it is necessary to complete the administrative steps to approve the use of eminent domain. No formal actions to formally initiate an eminent domain action with the courts will be taken until after offers have been made and negotiated. If an action is formally initiated, staff will continue to negotiate with the owners during the process.

Financial Considerations: The cost of these acquisitions will be paid for with general obligation bonds.

Goal Impact: The acquisition of these parcels is necessary to ensure efficient infrastructure in a rapidly growing part of the City.

Legal Considerations: The City is authorized by law to commence eminent domain proceedings to acquire this property.

Recommendation/Action: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property and directing the City Attorney to file the appropriate proceedings in the District court to accomplish such acquisition.

Attachments: Tract maps, condemnation resolution and condemnation ordinance.

ORDINANCE NO. 48-719

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PRIVATE PROPERTY, EASEMENTS AND RIGHT-OF-WAY THEREIN, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY FOR THE 119TH STREET WEST, KELLOGG AVENUE TO MAPLE AVENUE IMPROVEMENT PROJECT IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS; DESIGNATING THE LANDS REQUIRED FOR SUCH PURPOSES AND DIRECTING THE CITY ATTORNEY TO FILE A PETITION IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR ACQUISITION OF THE LANDS AND EASEMENTS THEREIN TAKEN AND PROVIDING FOR PAYMENT OF THE COST THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it be and is hereby declared to be a public necessity to acquire by eminent domain proceedings for the purpose of public right-of-way for the development of infrastructure associated with the development of the 119th Street West, Kellogg Avenue to Maple Avenue Improvement project in the City of Wichita, Sedgwick County, Kansas, the lands and easements hereinafter described in Section 2.

SECTION 2. That the description of the lands and title therein necessary for the purpose of such action is as follows:

Clear and complete title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

A tract of land described as the West 69.88 feet of the South 727 feet of the Northwest Quarter of Section 30, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, containing 0.38 acres more or less, exclusive of existing right-of-way TOGETHER WITH a tract beginning at a point 86.29 feet East of the West line of the Northwest Quarter of Section 30, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, and 656.17 feet North of the South line of said Northwest Quarter; thence West, parallel with said South line, a distance of 16.41 feet to a point 69.88 feet East of said West line; thence South, parallel with said West line, a distance of 239.50 feet; thence Northerly for a distance of 240.40 feet to the point of beginning, containing 1,965.43 square feet more or less and

A tract of land described as the East 50 feet of a tract of land described as follows: Beginning at a point on the East line of the Southeast Quarter of Section 25, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said point being 2,410 feet North of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302; thence West, parallel with said North highway right-of-way line, a distance of 475.60 feet; thence North, parallel with said East line, a distance of 132.70 feet more or less to a point on the North line of said Southeast Quarter; thence West along said North line a distance of 475.60 feet to the Northeast Corner of said Southeast Quarter; thence South along said East line to the point of beginning, EXCEPT the East 40 feet, containing 1,353.29 square feet more or less and

A tract of land described as beginning at the Southeast Corner of Lot 4, Block 2, Wheatridge Addition to Sedgwick County, Kansas; thence West along the South line of said Lot 4 a distance of 35.00 feet; thence Northerly to a point on the North line of said Lot 4 and 26.25 feet West of the Northeast Corner of said Lot 4; thence East along said North line of said Lot 4 a distance of 26.25 feet to said Northeast Corner of said Lot 4; thence South along the East line of said Lot 4 a distance of 200 feet to the point of beginning, containing 6,124.48 square feet more or less and

A tract of land described as beginning at the Northeast Corner of Lot 5, Bledsoe Addition to Sedgwick County, Kansas; thence South along the East line of said Lot 5 a distance of 134 feet to the Southeast Corner of said Lot 5; thence West along the South line of said Lot 5 a distance of 6.00 feet; thence Northerly for a distance of 134.21 feet to the point of beginning, containing 401.97 square feet more or less TOGETHER WITH a tract beginning at the Northeast Corner of Lot 6, Bledsoe Addition to Sedgwick County, Kansas; thence South, along the East line of said Lot 6, a distance of 76 feet; thence West, parallel with the North line of said Lot 6, a distance of 9.20 feet; thence Northerly for a distance of

76.10 feet to a point on said North line of said Lot 6 and 6.00 feet West of said Northeast Corner of said Lot 6; thence East along said North line of said Lot 6 a distance of 6.00 feet to the point of beginning, containing 577.55 square feet more or less and

A tract of land described as beginning at the Southeast Corner of Lot 6, Bledsoe Addition to Sedgwick County, Kansas; thence North along the East line of said Lot 6 a distance of 56 feet; thence West, parallel with the South line of said Lot 6, a distance of 9.20 feet; thence Southerly for a distance of 56.09 feet to a point on said South line of said Lot 6 and 11.75 feet West of said Southeast Corner of said Lot 6; thence East along said South line of said Lot 6 a distance of 11.75 feet to the point of beginning, containing 586.55 square feet more or less TOGETHER WITH a tract beginning at the Northeast Corner of Lot 7, Bledsoe Addition to Sedgwick County, Kansas; thence South along the East line of said Lot 7 a distance of 134 feet to the Southeast Corner of said Lot 7; thence West along the South line of said Lot 7 a distance of 17.50 feet; thence Northerly for a distance of 134.20 feet to a point on the North line of said Lot 7 and 11.75 feet West of said Northeast Corner of said Lot 7; thence East along said North line of said Lot 7 a distance of 11.75 feet, to the point of beginning, containing 1,959.58 square feet more or less and

A tract of land described as beginning at the Southeast Corner of Lot 1, Block A, Bolton Addition to Sedgwick County, Kansas; thence West along the South line of said Lot 1 a distance of 26.25 feet; thence Northerly to a point on the North line of said Lot 1 and 17.50 feet West of the Northeast Corner of said Lot 1; thence East along said North line of said Lot 1 a distance of 17.50 feet to said Northeast Corner of said Lot 1; thence South along the East line of said Lot 1 a distance of 200 feet to the point of beginning, containing 4,374.63 square feet more or less and

A tract of land described as Commencing from a point on the East line of the Southeast Quarter of Section 25, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said point being 1410 feet North of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302; thence West, parallel with said North highway right-of-way line, a distance of 40 feet to the point of beginning; thence continuing West, parallel with said North highway right-of-way line, a distance of 10 feet; thence North, parallel with said East line, a distance of 200 feet; thence East, parallel with said North highway right-of-way line, a distance of 10 feet; thence South, parallel with said East line, a distance of 200 feet to the point of beginning, containing 2,000.00 square feet more or less and

A tract of land described as That part of Lot 5, Block 2, Wheatridge Addition to Sedgwick County, Kansas, lying East of a line described as follows: Beginning at a point 75 feet West of the Southeast Corner of said Lot 5; thence Northeasterly to a point 50 feet North of the South line of said Lot 5 and 25 feet West of the East line of said Lot 5; thence North, parallel with said East line, a distance of 225 feet; thence Northeasterly to a point on the North line of said Lot 5 and 35 feet West of the Northeast Corner of said Lot 5, containing 0.27 acres more or less and

All right of access to and from the abutting public roadway over and across a line in Lot 5, Block 2, Wheatridge Addition to Sedgwick County, Kansas, described as follows: Beginning at a point 75 feet West of the Southeast Corner of said Lot 5; FIRST COURSE, thence Northeasterly to a point 50 feet North of the South line of said Lot 5 and 25 feet West of the East line of said Lot 5; SECOND COURSE, thence North, parallel with said East line, a distance of 225 feet.

And permanent easements for the purposes herein described in and to the following-described tracts, to-wit:

A permanent easement for drainage described as commencing from a point on the West line of the Northwest Quarter of Section 30, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, and 834 feet North of the Southwest Corner of said Northwest Quarter; thence East, perpendicular to said West line, a distance of 30 feet to the point of beginning; thence continuing East, perpendicular to said West line, a distance of 55 feet; thence North, parallel with said West line, a distance of 115 feet; thence West, perpendicular to said West line, a distance of 15 feet; thence North, parallel with said West line, a distance of 320 feet; thence West, perpendicular to said West line, a distance of 30 feet; thence South, parallel with said West line, a distance of 335 feet; thence West, perpendicular to said West line, a distance of 10 feet; thence South, parallel with said West line, a distance of 100 feet to the point of beginning, containing 0.36 acres more or less and

A permanent easement for drainage beginning at the Northwest Corner of Lot 1, Resthaven Gardens of Memory, an Addition to Wichita, Sedgwick County, Kansas; thence East along the North line of said Lot 1 a distance of 20 feet; thence South, parallel with the West line of said Lot 1, a distance of 530 feet; thence West, parallel with said North line of said Lot 1, a distance of 20 feet to a point on said West line of said Lot 1; thence North along said West line of said Lot 1 a distance of 530 feet to the point of beginning, containing 0.24 acres more or less and

A permanent easement for drainage described as beginning at a point on the South line of the Northeast Quarter of Section 25, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, and 40 feet West of the East line of said Northeast Quarter; thence West along said South line to a point 72 feet West of said East line; thence North, parallel with said East line, a distance of 500 feet; thence West, perpendicular to said East line, a distance of 8 feet; thence North, parallel with said East line, a distance of 170 feet; thence West, perpendicular to said East line, a distance of 10 feet; thence North, parallel with said East line, a distance of 275 feet; thence East; perpendicular to said East line, a distance of 20 feet; thence North, parallel with said East line, a distance of 270 feet; thence East, perpendicular to said East line, a distance of 20 feet; thence North, parallel with said East line, a distance of 30.46 feet more or less to a point on the South line of Reserve "A", Block A, Thunderbird Office Park, an Addition to Wichita, Sedgwick County, Kansas; thence East, perpendicular to said East line, a distance of 10 feet; thence South, parallel with said East line, to the point of beginning, containing 1.03 acres more or less and

A permanent easement for sidewalk and related uses described as commencing from a point on the West line of the Northwest Quarter of Section 30, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, and 520 feet South of the Northwest Corner of said Northwest Quarter; thence East, perpendicular to said West line, a distance of 30 feet to the point of beginning; thence continuing East, perpendicular to said West line, a distance of 10 feet; thence South, parallel with said West line, a distance of 466 feet; thence West, perpendicular to said West line, a distance of 10 feet; thence North, parallel with said West line, a distance of 466 feet to the point of beginning, containing 4,660.00 square feet more or less and

A permanent easement for sidewalk and related uses described as commencing from a point on the West line of the Northwest Quarter of Section 30, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, and 934 feet North of the Southwest Corner of said Northwest Quarter; thence East, perpendicular to said West line, a distance of 30 feet to the point of beginning; thence continuing East, perpendicular to said West line, a distance of 10 feet; thence North, parallel with said West line, a distance of 335 feet; thence West, perpendicular to said West line, a distance of 10 feet; thence South, parallel with said West line, a distance of 335 feet to the point of beginning, containing 3,350.00 square feet more or less and

And temporary construction easements for driveway, drainage and road construction in and to the following-described tracts, to-wit:

A temporary construction easement described as commencing from a point on the West line of the Northwest Quarter of Section 30, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, and 520 feet South of the Northwest Corner of said Northwest Quarter; thence East, perpendicular to said West line, a distance of 40 feet to the point of beginning; thence continuing East, perpendicular to said West line, a distance of 60 feet; thence South, parallel with said West line, a distance of 175 feet; thence Southwesterly for a distance of 293.10 feet to a point 986 feet South and 65 feet East of said Northwest Corner; thence West, perpendicular to said West line, a distance of 25 feet; thence North, parallel with said West line, a distance of 466 feet to the point of beginning, containing 0.52 acres more or less and

A temporary construction easement described as commencing from a point on the West line of the Northwest Quarter of Section 30, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said point being 986 feet South of the Northwest Corner of said Northwest Quarter; thence East, perpendicular to said West line, a distance of 50 feet to the point of beginning; thence South, parallel with said West line, a distance of 40 feet; thence East, perpendicular to said West line, a distance of 15 feet; thence North, parallel with said West line, a distance of 40 feet; thence West, perpendicular to said West line, a distance of 15 feet to the point of beginning, containing 600.00 square feet more or less TOGETHER WITH a tract commencing from a point on the West line of the Northwest Quarter of Section 30, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick

County, Kansas, said point being 986 feet South of the Northwest Corner of said Northwest Quarter; thence East, perpendicular to said West line, a distance of 50 feet; thence South, parallel with said West line, a distance of 148 feet to the point of beginning; thence continuing South, parallel with said West line, a distance of 22 feet; thence East, perpendicular to said West line, a distance of 10 feet; thence North, parallel with said West line, a distance of 22 feet; thence West, perpendicular to said West line, a distance of 10 feet to the point of beginning, containing 220.00 square feet more or less and

A temporary construction easement described as beginning at a point 69.88 feet East of the West line of the Northwest Quarter of Section 30, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, and 80 feet North of the South line of said Northwest Quarter; thence North, parallel with said West line, a distance of 25 feet; thence East, parallel with said South line, a distance of 5 feet; thence South, parallel with said West line, a distance of 25 feet; thence West, parallel with said South line, a distance of 5 feet to the point of beginning, containing 124.98 square feet more or less and

A temporary construction easement described as the East 70 feet of a tract of land described as follows: Beginning at a point on the East line of the Southeast Quarter of Section 25, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said point being 2,410 feet North of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302; thence West, parallel with said North highway right-of-way line, a distance of 475.60 feet; thence North, parallel with said East line, a distance of 132.70 feet more or less to a point on the North line of said Southeast Quarter; thence West along said North line a distance of 475.60 feet to the Northeast Corner of said Southeast Quarter; thence South along said East line to the point of beginning, EXCEPT the East 50 feet, containing 2,704.61 square feet more or less and

A temporary construction easement described as commencing from the Northeast Corner of Lot 4, Block 2, Wheatridge Addition to Sedgwick County, Kansas; thence West along the North line of said Lot 4 a distance of 26.25 feet to the point of beginning; thence continuing West along said North line of said Lot 4 a distance of 26.75 feet; thence South, parallel with the East line of said Lot 4, a distance of 70 feet; thence East, parallel with said North line of said Lot 4, a distance of 23.69 feet; thence Northerly for a distance of 70.11 feet to the point of beginning, containing 1,765.16 square feet more or less and

A temporary construction easement described as beginning at the Northeast Corner of Lot 5, Bledsoe Addition to Sedgwick County, Kansas; thence West along the North line of said Lot 5 a distance of 20 feet; thence South, parallel with the East line of said Lot 5, a distance of 134 feet to a point on the South line of said Lot 5; thence East along said South line of said Lot 5 a distance of 14 feet; thence Northerly for a distance of 134.21 feet to the point of beginning, containing 2,277.81 square feet more or less TOGETHER WITH a tract beginning at a point on the North line of Lot 6, Bledsoe Addition to Sedgwick County, Kansas, and 6 feet West of the Northeast Corner of said Lot 6; thence West along said North line of said Lot 6 a distance of 20 feet; thence South, parallel with the East line of said Lot 6 a distance of 10 feet; thence East, parallel with said North line of said Lot 6, a distance of 13.58 feet; thence Northerly for a distance of 10.01 feet to the point of beginning, containing 137.88 square feet more or less and

A temporary construction easement described as commencing from the Southeast Corner of Lot 7, Bledsoe Addition to Sedgwick County, Kansas; thence North along the East line of said Lot 7 a distance of 45 feet; thence West, parallel with the South line of said Lot 7, a distance of 15.57 feet to the point of beginning; thence continuing West, parallel with said South line of said Lot 7, a distance of 24.43 feet; thence North, parallel with said East line of said Lot 7, a distance of 52 feet; thence East, parallel with said South line of said Lot 7, a distance of 26.66 feet; thence Southerly for a distance of 52.08 feet to the point of beginning, containing 1,328.31 square feet more or less and

A temporary construction easement described as commencing from the Northeast Corner of Lot 1, Block A, Bolton Addition to Sedgwick County, Kansas; thence South along the East line of said Lot 1 a distance of 50 feet; thence West, parallel with the North line of said Lot 1, a distance of 19.69 feet to the point of beginning; thence continuing West, parallel with said North line of said Lot 1, a distance of 20.31 feet; thence South, parallel with said East line of said Lot 1, a distance of 47 feet; thence East, parallel with said North line of said Lot 1, a distance of 18.26 feet; thence Northerly for a distance of 47.07 feet to the point of beginning, containing 906.29 square feet more or less and

A temporary construction easement described as commencing from the Northeast Corner of Lot 2, Block A, Thunderbird Office Park, an Addition to Wichita, Sedgwick County, Kansas; thence S 00°00'00" W

along the East line of said Lot 2 a distance of 99.90 feet to the point of beginning; thence continuing S 00°00'00" W along said East line of said Lot 2 a distance of 241.09 feet; thence S 90°00'00" W a distance of 47.11 feet; thence N 17°17'25" E a distance of 91.21 feet; thence N 90°00'00" E a distance of 13.00 feet to a point 7.00 feet West of said East line of said Lot 2; thence N 00°00'00" E a distance of 154.00 feet; thence N 90°00'00" E a distance of 7.00 feet to the point of beginning, containing 4,000.31 square feet more or less and

A temporary construction easement described as commencing at the southern most South Corner of Lot 2, Block A, Thunderbird Office Park, an Addition to Wichita, Sedgwick County, Kansas; thence N 00°00'00" E along the East line of said Lot 2 a distance of 193.63 feet to the point of beginning; thence N 43°15'32" W a distance of 27.82 feet; thence N 02°46'00" W a distance of 60.81 feet; thence N 12°16'08" E a distance of 80.00 feet; thence N 00°00'00" E, parallel with said East line of said Lot 2, a distance of 200.00 feet; thence N 47°26'32" W a distance of 30.00 feet; thence N 90°00'00" W a distance of 17.66 feet; thence N 00°00'00" E, parallel with said East line of said Lot 2, a distance of 3.00 feet; thence S 90°00'00" E a distance of 44.76 feet to a point on said East line of said Lot 2; thence S 00°00'00" W along said East line of said Lot 2 a distance of 382.46 feet to the point of beginning, containing 3,955.55 square feet more or less and

A temporary construction easement described as commencing from the Northeast Corner of Lot 2, Block A, Thunderbird Office Park, an Addition to Wichita, Sedgwick County, Kansas; thence S 00°00'00" W along the East line of said Lot 2 a distance of 340.99 feet to the point of beginning; thence continuing S 00°00'00" W along said East line of said Lot 2 a distance of 61.99 feet; thence S 90°00'00" W a distance of 44.76 feet; thence N 00°00'00" E, parallel with said East line of said Lot 2, a distance of 61.99 feet; thence N 90°00'00" E a distance of 44.76 feet to the point of beginning, containing 2,774.54 square feet more or less TOGETHER WITH a tract beginning at the southern most South Corner of Lot 2, Block A, Thunderbird Office Park, an Addition to Wichita, Sedgwick County, Kansas; thence N 00°00'00" E along the East line of said Lot 2 a distance of 193.63 feet; thence N 43°15'32" W a distance of 27.82 feet; thence S 02°46'00" E a distance of 84.00 feet; thence S 06°35'13" E a distance of 130.85 feet to the point of beginning, containing 2,211.95 square feet more or less and

A temporary construction easement described as commencing from the Northwest Corner of Lot 1, Resthaven Gardens of Memory, an Addition to Wichita, Sedgwick County, Kansas; thence South along the West line of said Lot 1 a distance of 1,225 feet to the point of beginning; thence East, perpendicular to said West line of said Lot 1, a distance of 10 feet; thence South, parallel with said West line of said Lot 1, a distance of 35 feet; thence West, perpendicular to said West line of said Lot 1, a distance of 10 feet to a point on said West line of said Lot 1; thence North along said West line of said Lot 1 a distance of 35 feet to the point of beginning, containing 350.00 square feet more or less TOGETHER WITH a tract commencing from the Northwest Corner of Lot 1, Resthaven Gardens of Memory, an Addition to Wichita, Sedgwick County, Kansas; thence South along the West line of said Lot 1 a distance of 1,365 feet to the point of beginning; thence East, perpendicular to said West line of said Lot 1, a distance of 30 feet; thence South, parallel with said West line of said Lot 1, a distance of 43 feet; thence West, perpendicular to said West line of said Lot 1, a distance of 30 feet to a point on said West line of said Lot 1; thence North along said West line of said Lot 1 a distance of 43 feet to the point of beginning, containing 1,290.00 square feet more or less and

A temporary construction easement described as commencing from the Northeast Corner of Lot 1, Block A, Thunderbird Office Park, an Addition to Wichita, Sedgwick County, Kansas; thence S 00°00'00" E along the East line of said Lot 1 a distance of 175.00 feet to the point of beginning; thence continuing S 00°00'00" E a distance of 100.47 feet more or less to a point on the South line of said Lot 1; thence N 88°55'15" E along said South line of said Lot 1 a distance of 25.00 feet to the Southeast Corner of said Lot 1; thence N 14°02'10" W along said East line of said Lot 1 a distance of 103.08 feet to the point of beginning, containing 1,255.89 square feet more or less TOGETHER WITH a tract beginning at the Northeast Corner of Lot 2, Block A, Thunderbird Office Park, an Addition to Wichita, Sedgwick County, Kansas; thence S 00°00'00" E along the East line of said Lot 2 a distance of 99.90 feet; thence N 90°00'00" W a distance of 7.00 feet; thence N 00°00'00" E, parallel with said East line of said Lot 2, a distance of 99.77 feet more or less to a point on the North line of said Lot 2; thence N 88°55'15" E along said North line of said Lot 2 a distance of 7.00 feet to the point of beginning, containing 698.84 square feet more or less and

A temporary construction easement described as commencing from the Southeast Corner of Lot 3, Block 1, J.D. Owens Addition to Sedgwick County, Kansas; thence North along the East line of said Lot 3 a

distance of 59 feet to the point of beginning; thence West, parallel with the South line of said Lot 3, a distance of 15 feet; thence North, parallel with said East line of said Lot 3, a distance of 40 feet; thence East, parallel with said South line of said Lot 3, a distance of 15 feet to a point on said East line of said Lot 3; thence South along said East line of said Lot 3 a distance of 40 feet to the point of beginning, containing 614.95 square feet more or less and

A temporary construction easement described as commencing from a point on the East line of the Southeast Quarter of Section 25, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said point being 1410 feet North of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302; thence West, parallel with said North highway right-of-way line, a distance of 40 feet; thence North, parallel with said East line, a distance of 35 feet to the point of beginning; thence West, perpendicular to said East line, a distance of 10 feet; thence North, parallel with said East line, a distance of 32 feet; thence East, perpendicular to said East line, a distance of 10 feet; thence South, parallel with said East line, a distance of 32 feet to the point of beginning, containing 320 square feet more or less and

A temporary construction easement described as beginning at the Northeast Corner of Lot 2, Block A, Friess Addition to Sedgwick County, Kansas; thence West along the North line of said Lot 2 a distance of 15 feet; thence South, parallel with the East line of said Lot 2, a distance of 105 feet to a point on the South line of said Lot 2; thence East along said South line of said Lot 2 a distance of 15 feet to the Southeast Corner of said Lot 2; thence North along said East line of said Lot 2 a distance of 105 feet to the point of beginning, containing 1,574.87 square feet more or less and

A temporary construction easement described as commencing from a point on the South line of Lot 5, Block 2, Wheatridge Addition to Sedgwick County, Kansas, and 75 feet West of the Southeast Corner said Lot 5; thence Northeasterly to a point 50 feet North of said South line of said Lot 5 and 25 feet West of the East line of said Lot 5; thence North, parallel with said East line of said Lot 5, a distance of 225 feet to the point of beginning; thence Northeasterly to a point on the North line of said Lot 5 and 35 feet West of the Northeast Corner of said Lot 5; thence West along said North line of said Lot 5 a distance of 30 feet; thence South, parallel with said East line of said Lot 5, a distance of 75 feet; thence East, parallel with said North line of said Lot 5, a distance of 15 feet to the point of beginning, containing 1,687.10 square feet more or less.

SECTION 3. That the City Attorney is hereby authorized and directed to commence proceedings in eminent domain in the District Court of Sedgwick County, Kansas, for the appropriation of said lands and determination of the compensation to be awarded for the taking thereof.

SECTION 4. That the costs of said acquisition when ascertained shall be paid from General Obligation Bonds to be issued for the costs of such improvements; PROVIDED, however, should the City of Wichita acquire said property (and said City hereby reserves its right to abandon the condemnation as to any of all tracts) that General Funds are available for said purpose as provided by law.

SECTION 5. That the costs of said acquisition shall be charged to the City of Wichita.

SECTION 6. That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 20th day of, April 2010.

CITY OF WICHITA

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

PUBLISHED IN THE WICHITA EAGLE ON APRIL 16, 2010

RESOLUTION NO. 10-096

A RESOLUTION DECLARING THE NECESSITY FOR ACQUIRING PRIVATE PROPERTY FOR THE USE OF THE CITY OF WICHITA IN CONNECTION WITH THE PLANNED 119TH STREET WEST – KELLOGG AVENUE TO MAPLE AVENUE IMPROVEMENT PROJECT IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS;

WHEREAS, the governing body has previously authorized the study and the preliminary design of certain improvements for public right-of-way of 119th Street West from Kellogg Avenue to Maple Avenue in the City of Wichita; and

WHEREAS, such study and preliminary design has identified the need to acquire several parcels of private property in order to properly complete such improvements; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

SECTION 1. The governing body hereby declares it to be necessary to acquire certain private property in connection with improvement of 119th Street West Street from Kellogg Avenue to Maple Avenue.

SECTION 2. The City Engineer is directed to make or cause to be made a survey and description of the lands and/or interests to be acquired and to have such survey and description filed with the City Clerk.

SECTION 3. That this Resolution shall take effect and be in force from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 13th day of April, 2010.

CITY OF WICHITA

Carl Brewer, Mayor

ATTEST:

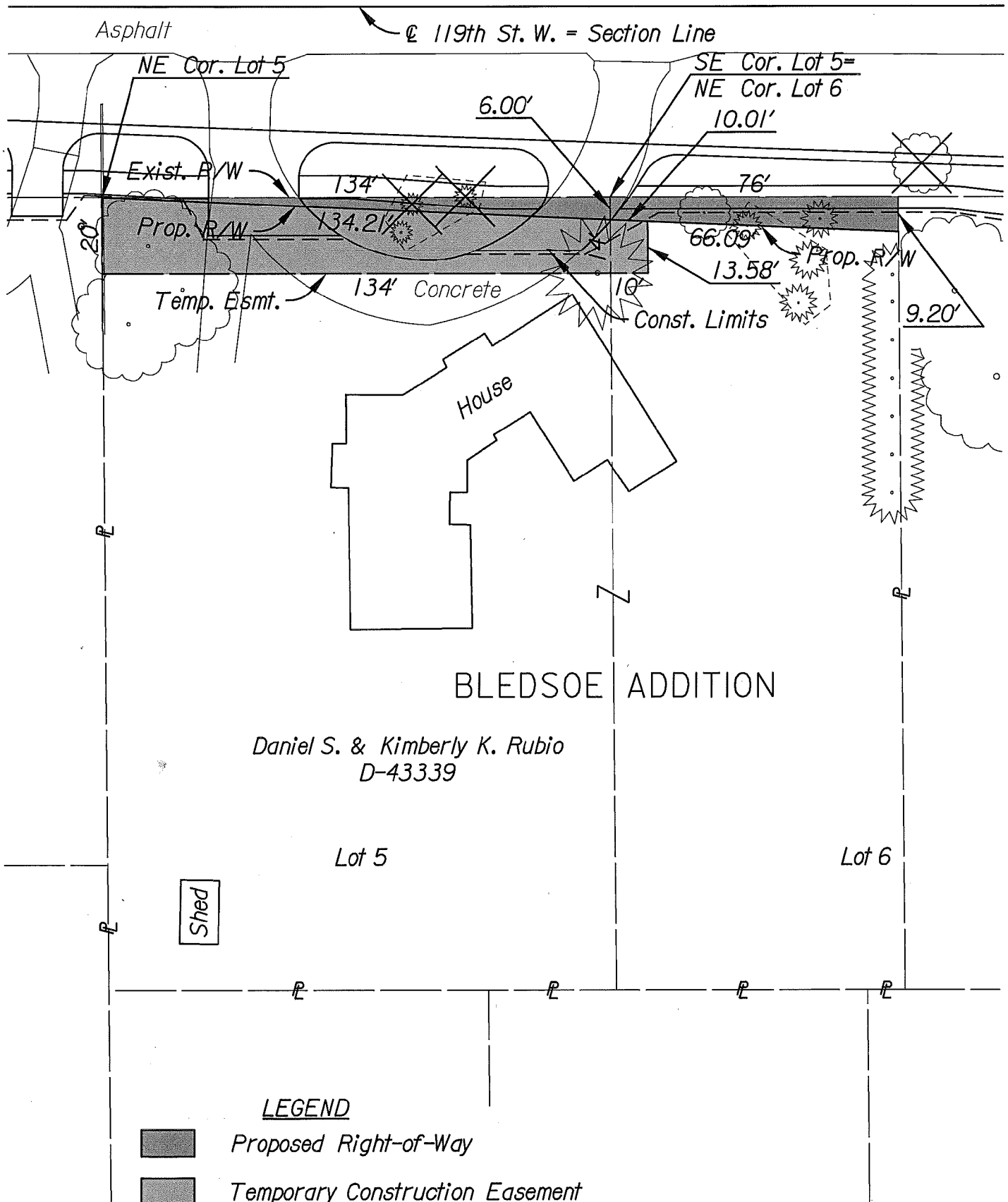
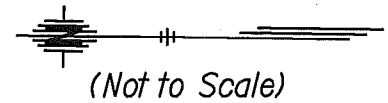
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

TRACT MAP D-43339

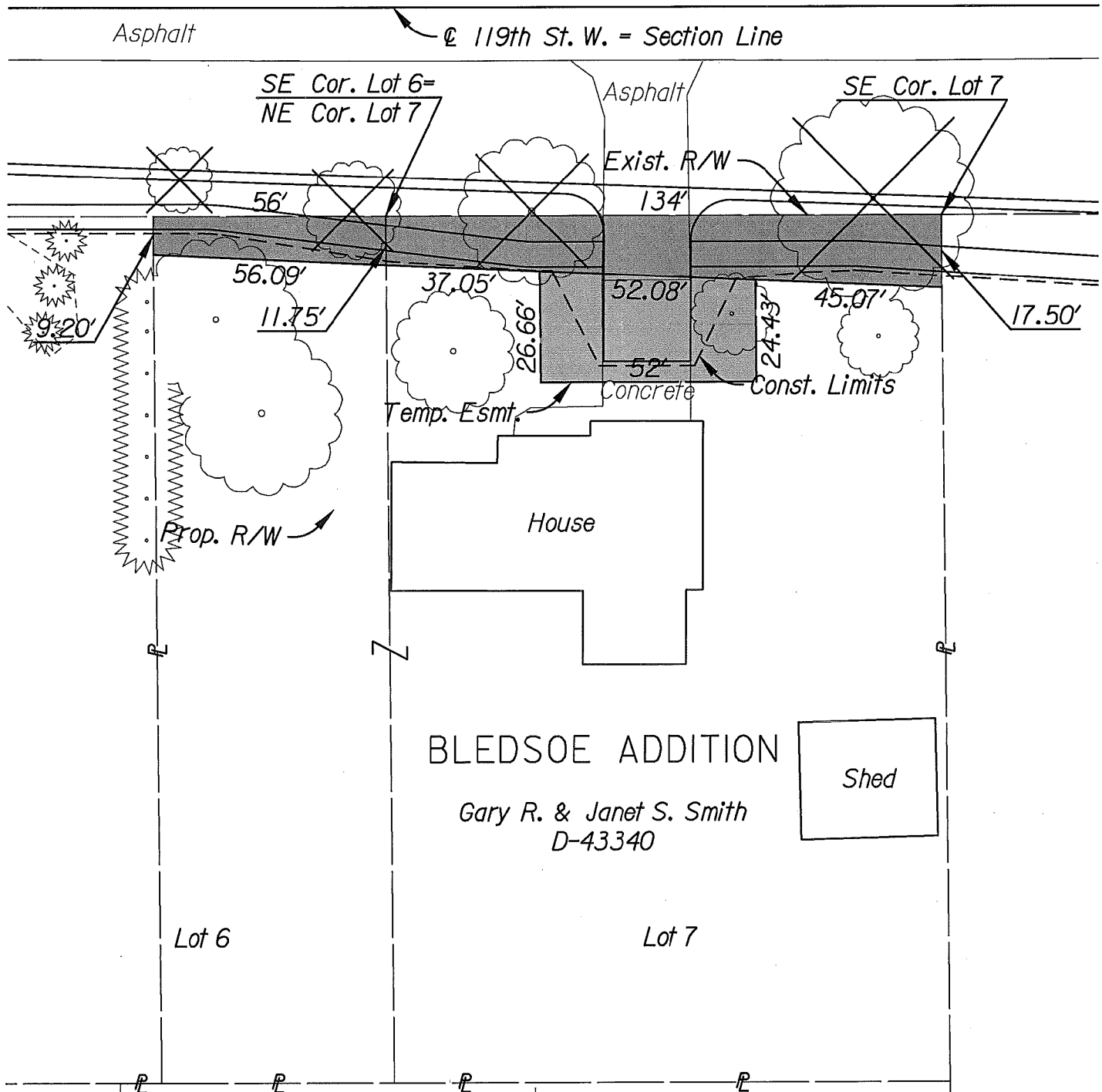
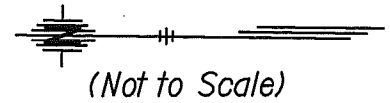
RIGHT-OF-WAY, TEMPORARY CONSTRUCTION EASEMENT



March 15, 2010

TRACT MAP D-43340

RIGHT-OF-WAY, TEMPORARY CONSTRUCTION EASEMENT



LEGEND



Proposed Right-of-Way

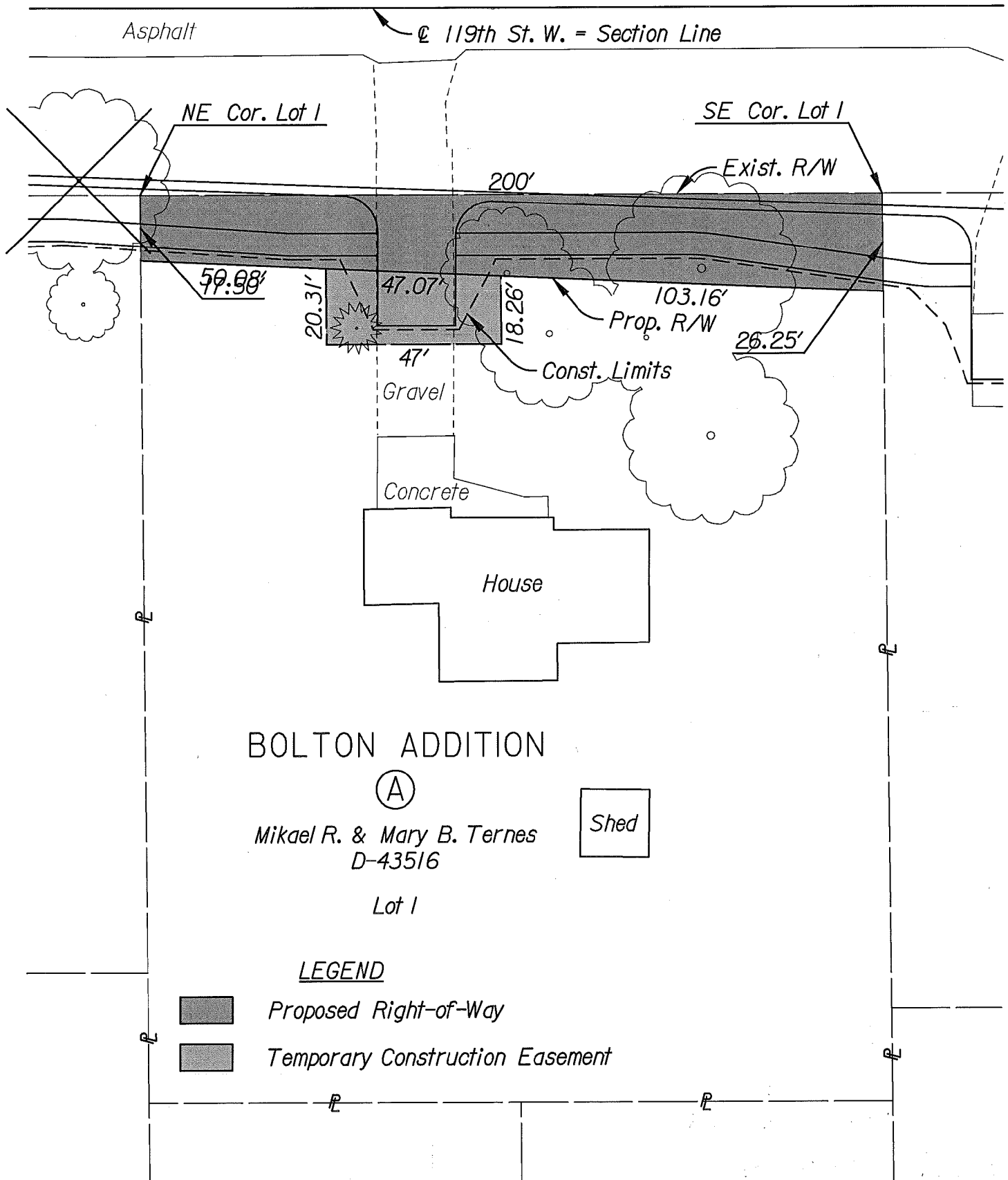
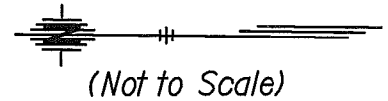


Temporary Construction Easement

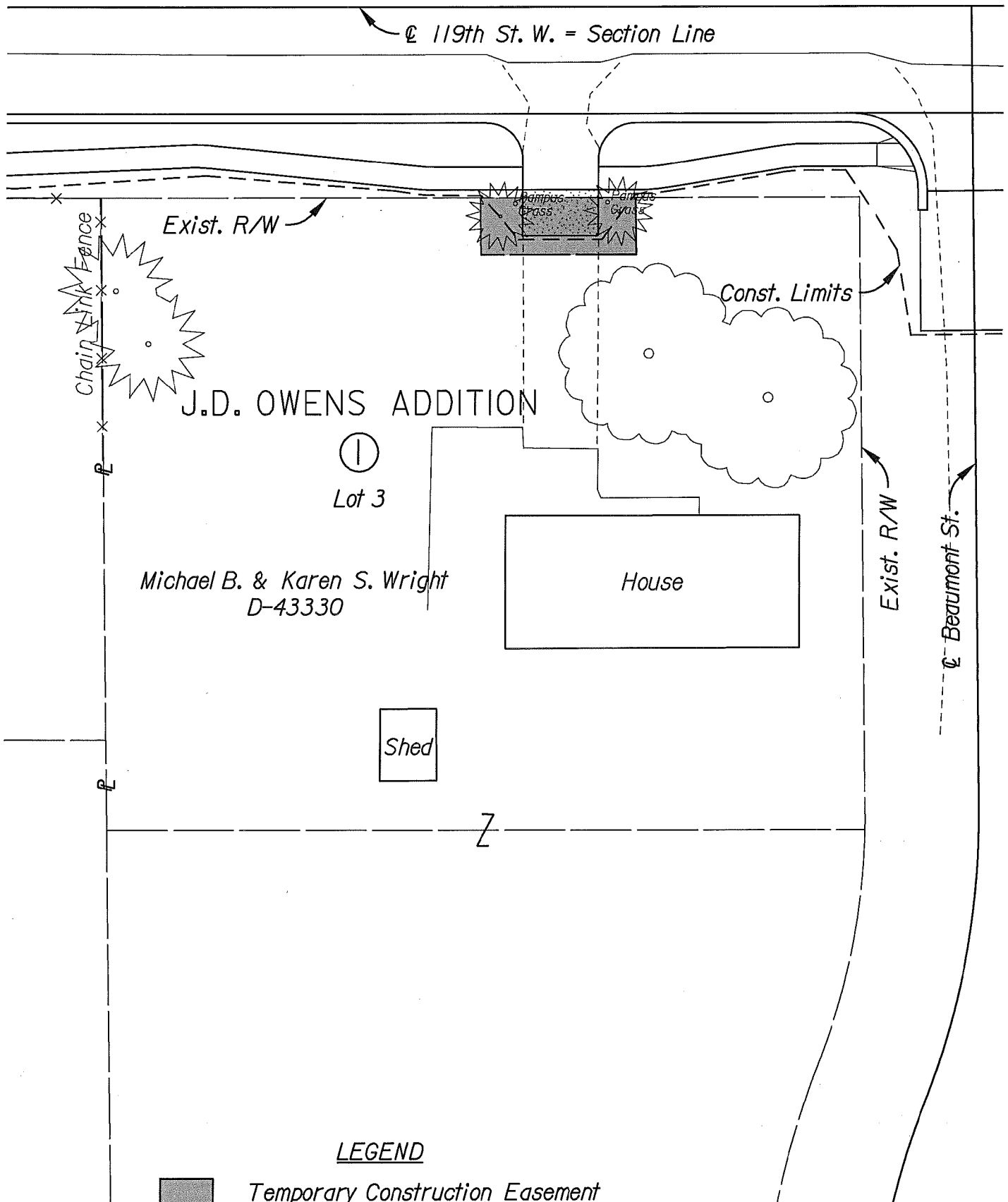
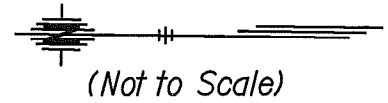
March 15, 2010

TRACT MAP D-43516

RIGHT-OF-WAY, TEMPORARY CONSTRUCTION EASEMENT

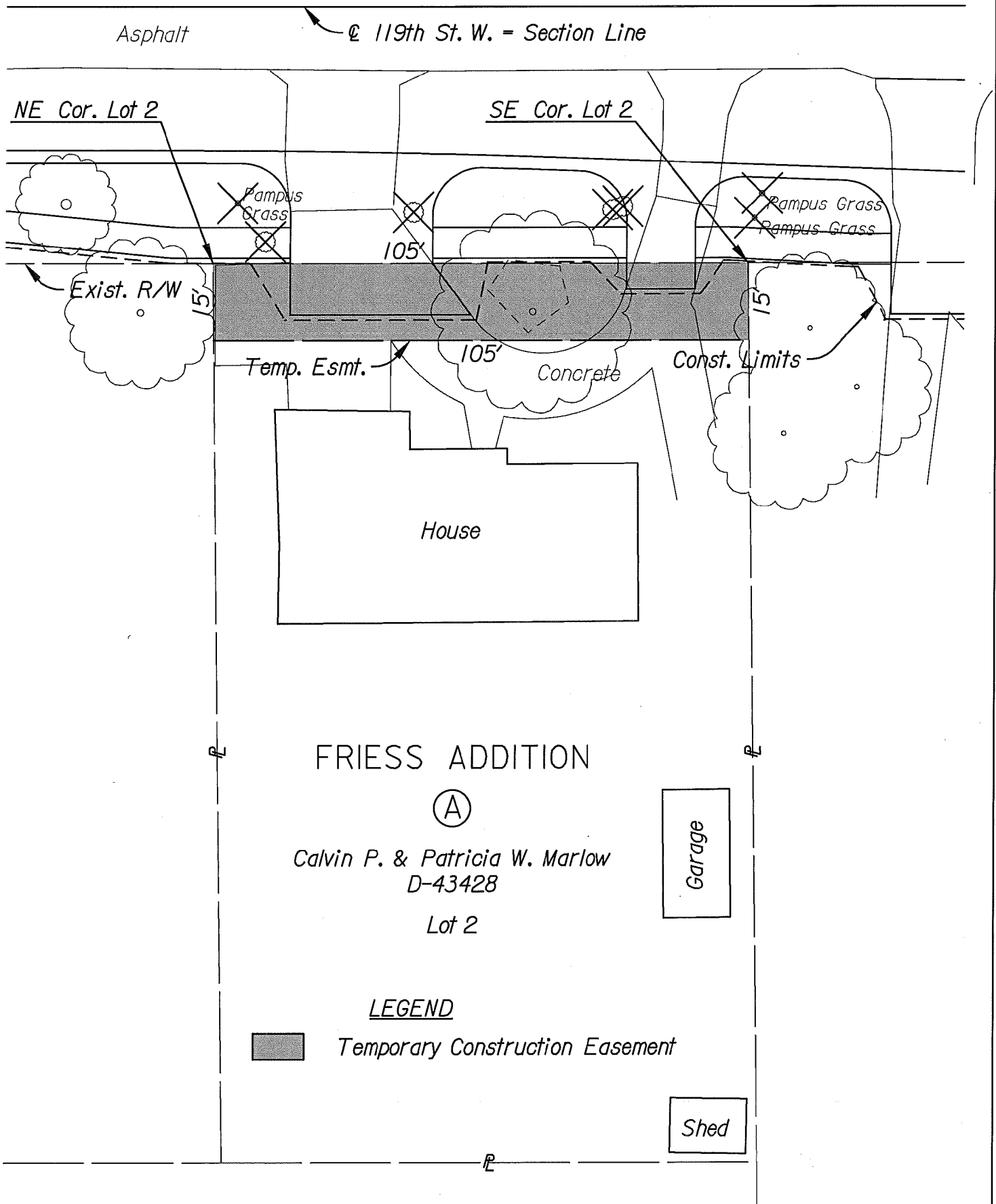
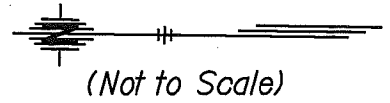


TRACT MAP D-43330
TEMPORARY CONSTRUCTION EASEMENT



March 4, 2010

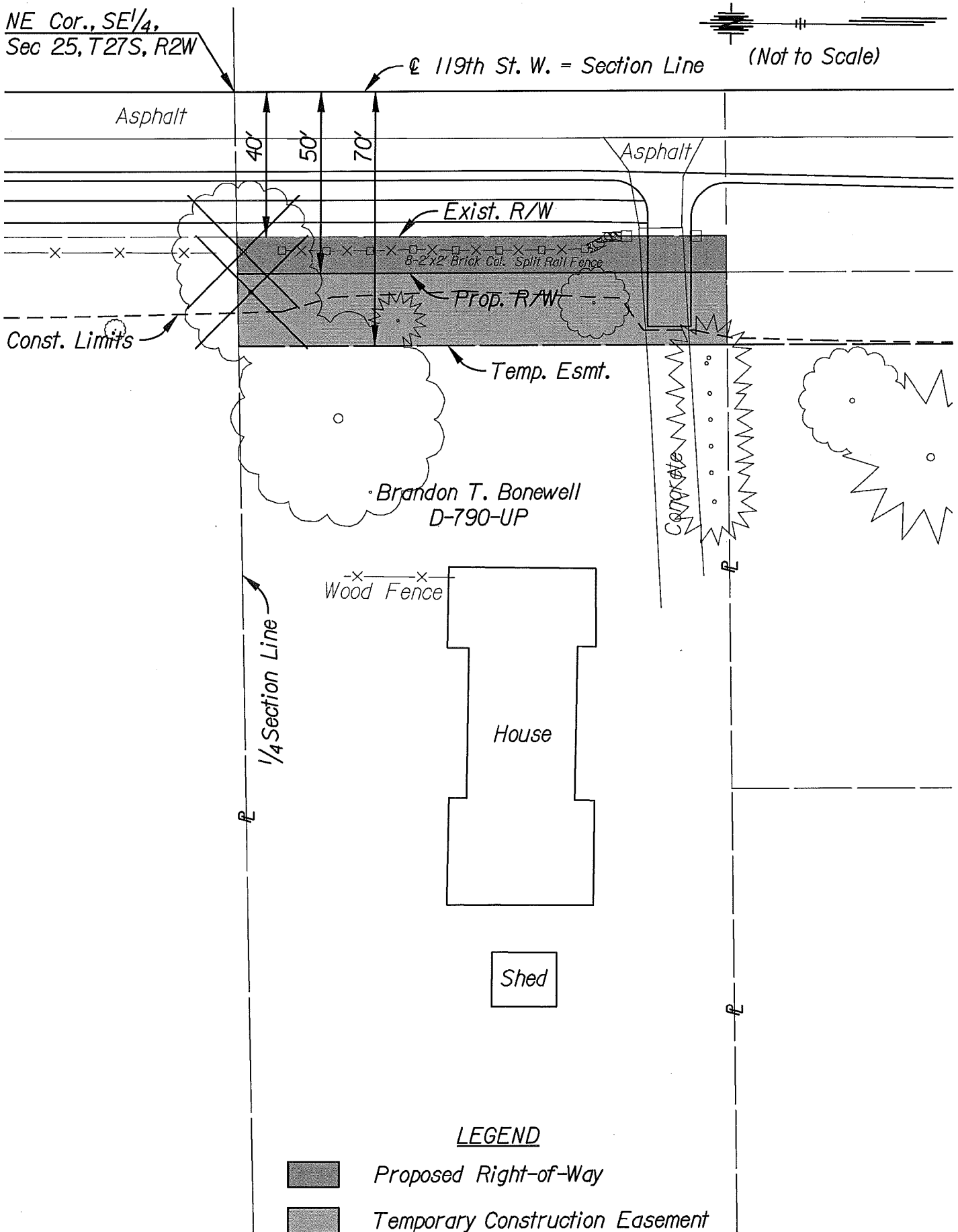
TRACT MAP D-43428
TEMPORARY CONSTRUCTION EASEMENT



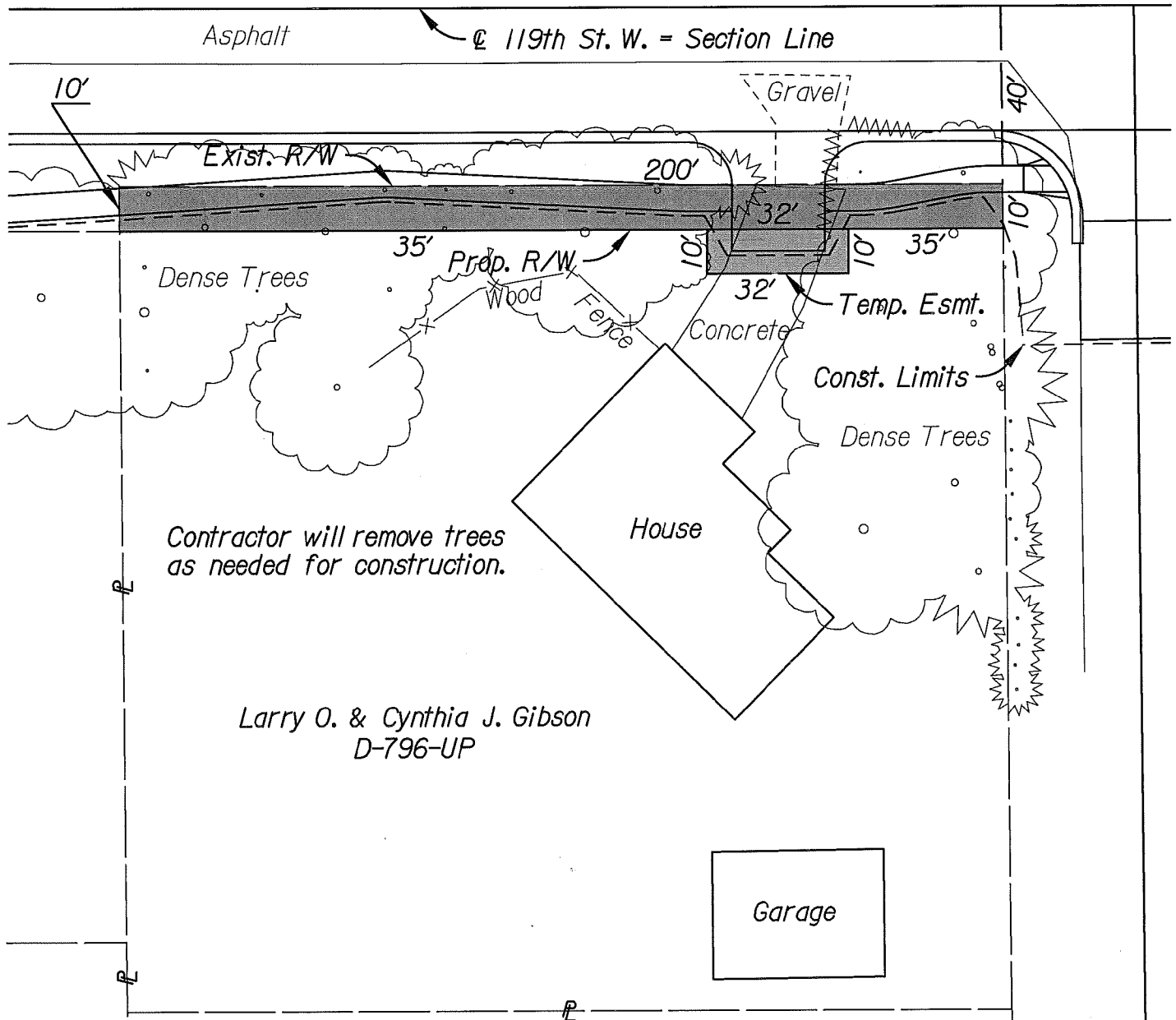
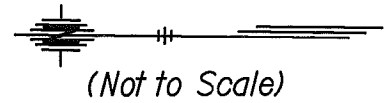
TRACT MAP D-790-UP

RIGHT-OF-WAY, TEMPORARY CONSTRUCTION EASEMENT



NE Cor., SE 1/4,
Sec 25, T27S, R2W



TRACT MAP D-796-UP
RIGHT-OF-WAY, TEMPORARY CONSTRUCTION EASEMENT



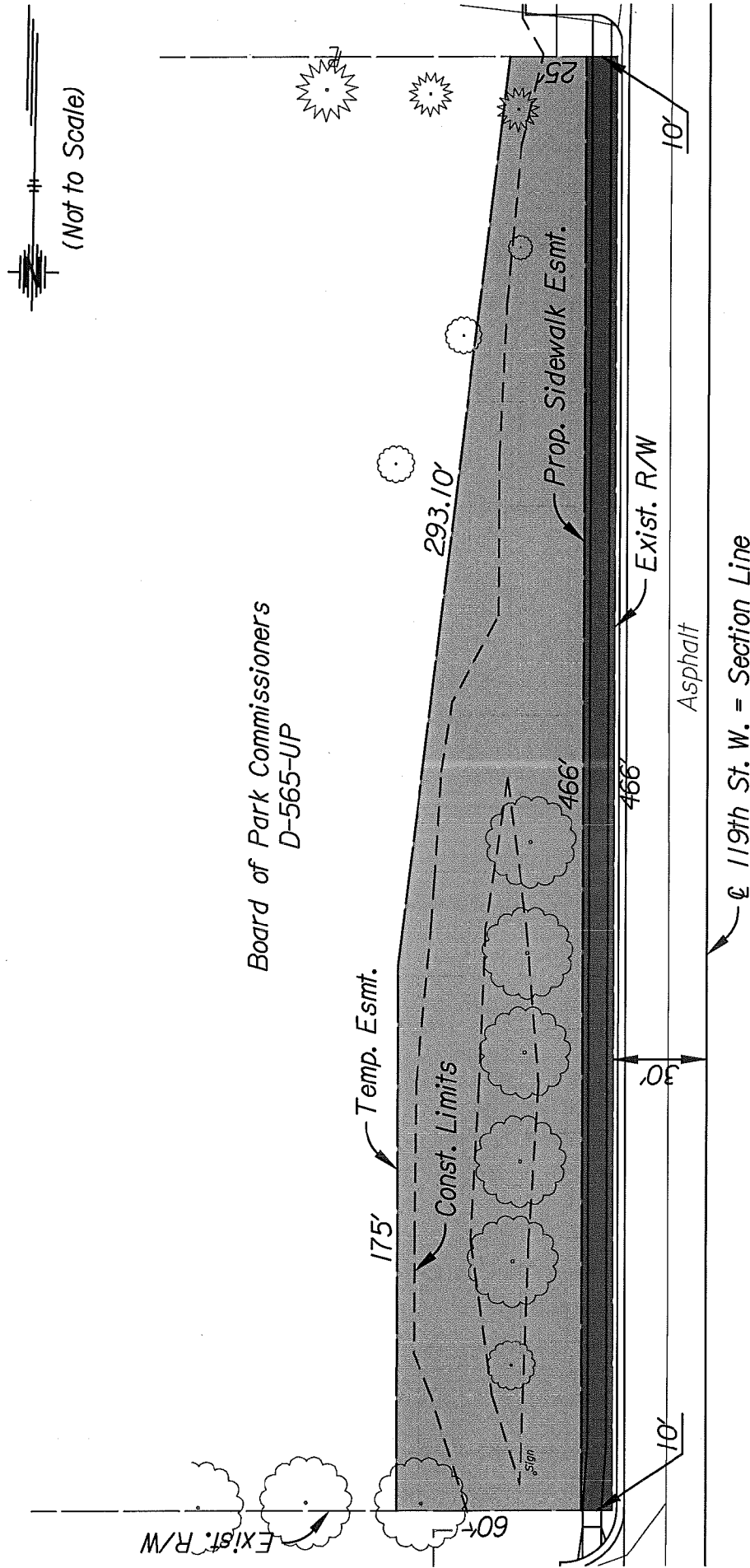
LEGEND

-  *Proposed Right-of-Way*
-  *Temporary Construction Easement*

March 4, 2010

TRACT MAP D-565-UP

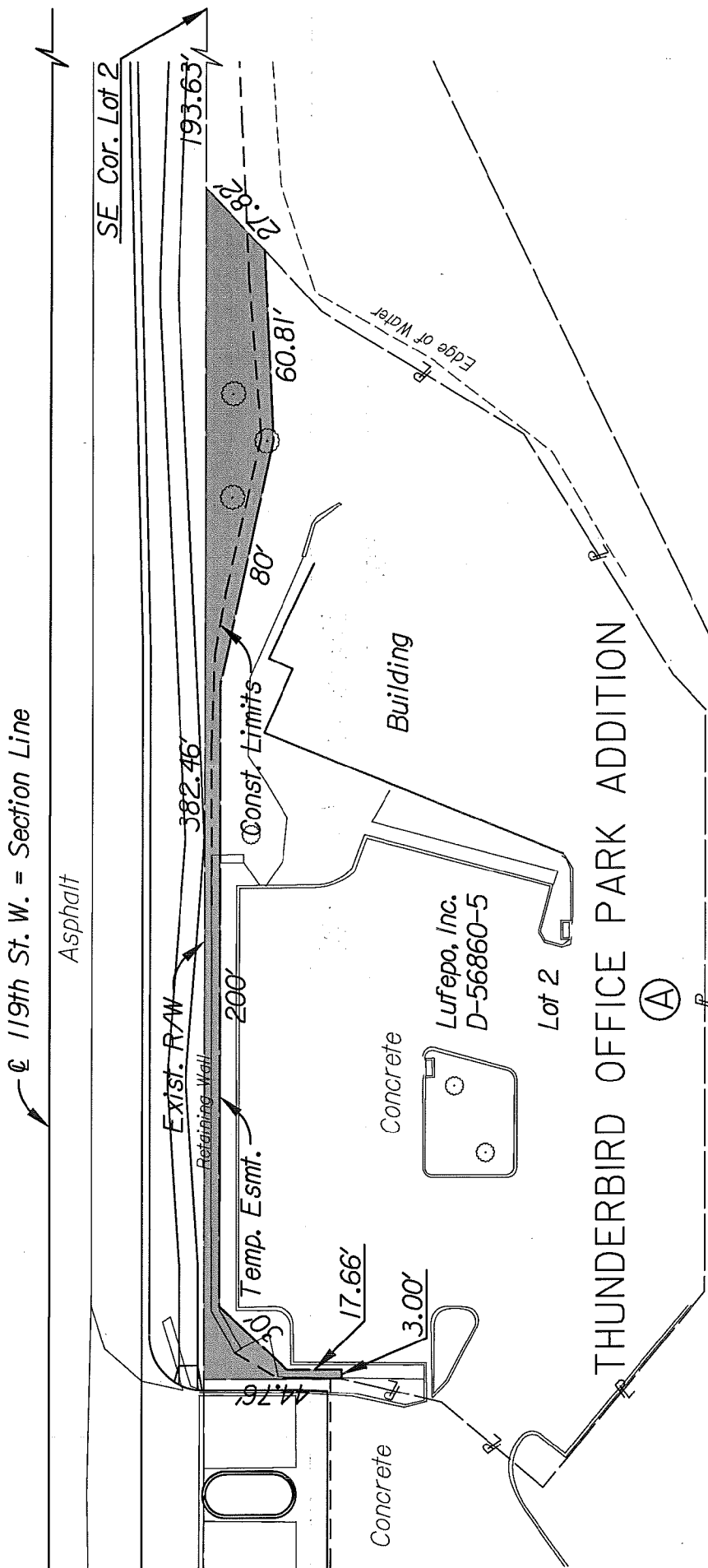
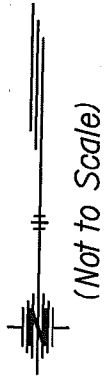
SIDEWALK EASEMENT, TEMPORARY CONSTRUCTION EASEMENT



LEGEND

- Proposed Sidewalk Easement
- Temporary Construction Easement

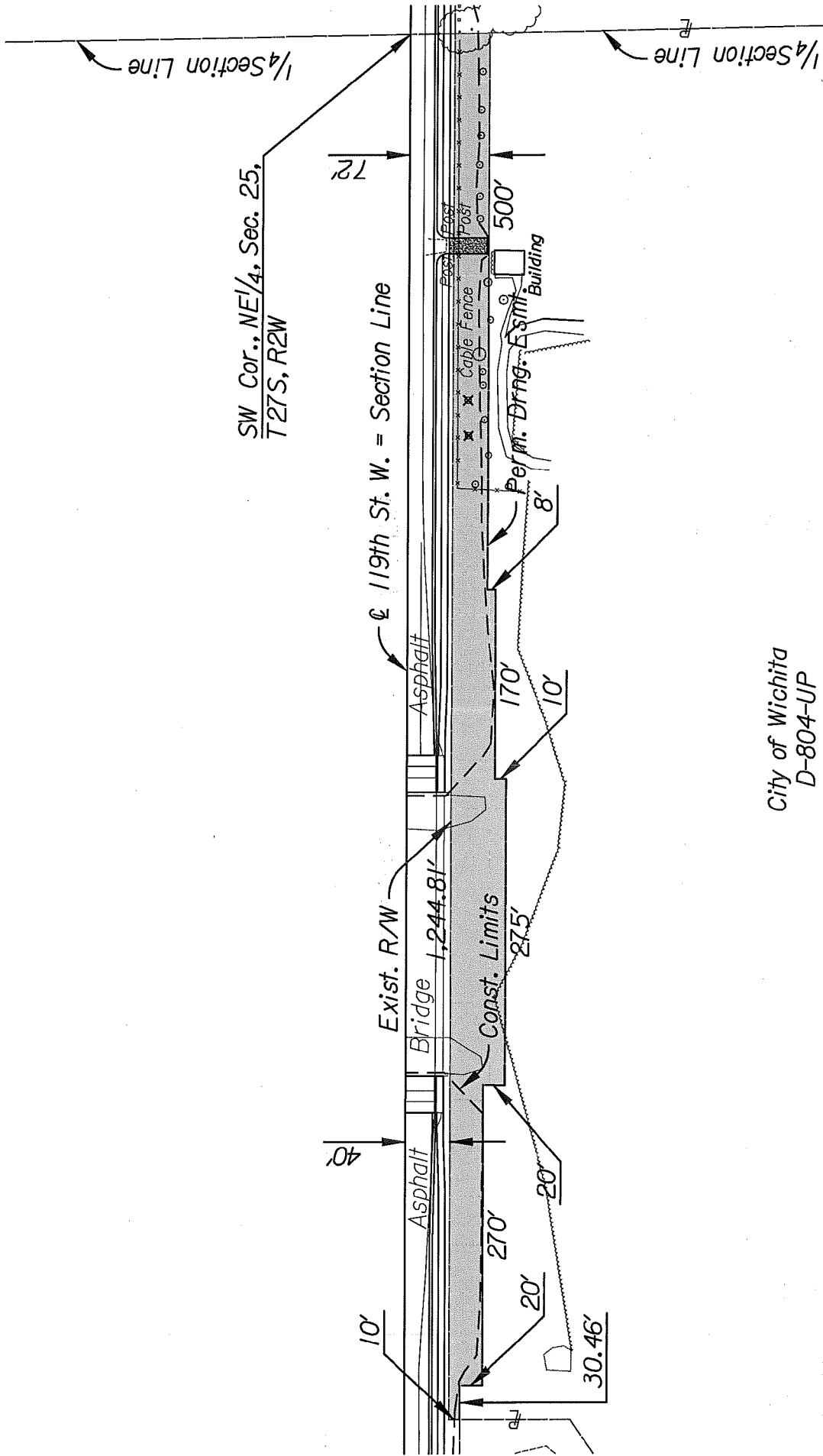
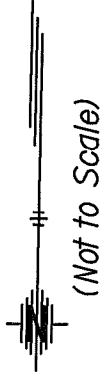
TRACT MAP D-56860-5
TEMPORARY CONSTRUCTION EASEMENT



LEGEND
 Temporary Construction Easement

TRACT MAP D-804-UP

PERMANENT DRAINAGE EASEMENT



LEGEND

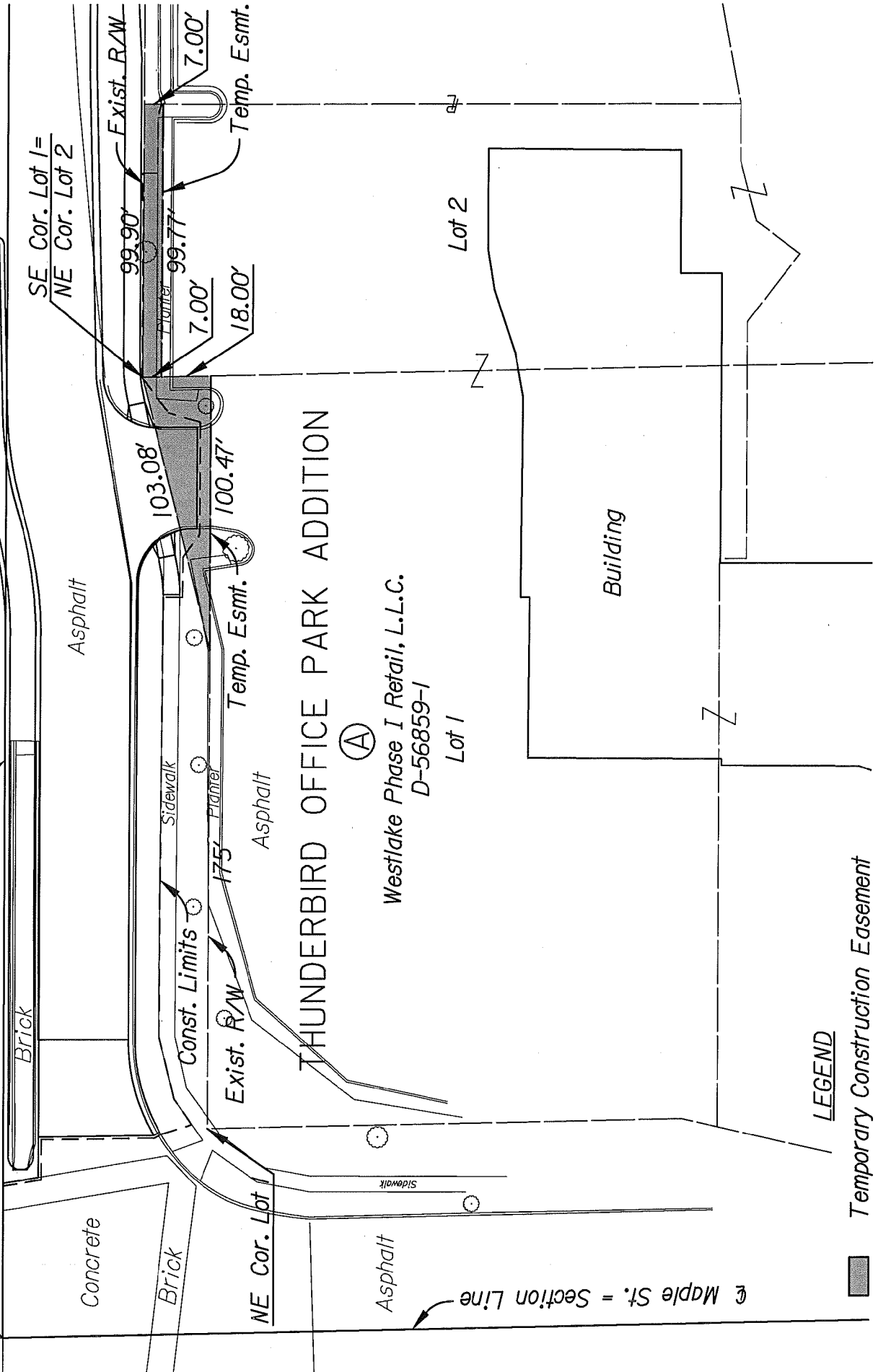
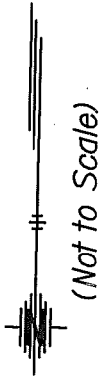
Permanent Drainage Easement

City of Wichita
D-804-UP

TRACT MAP D-56859-1 TEMPORARY CONSTRUCTION EASEMENT

NE Cor. Sec 25,
T27S, R2W

119th St. W. = Section Line



LEGEND

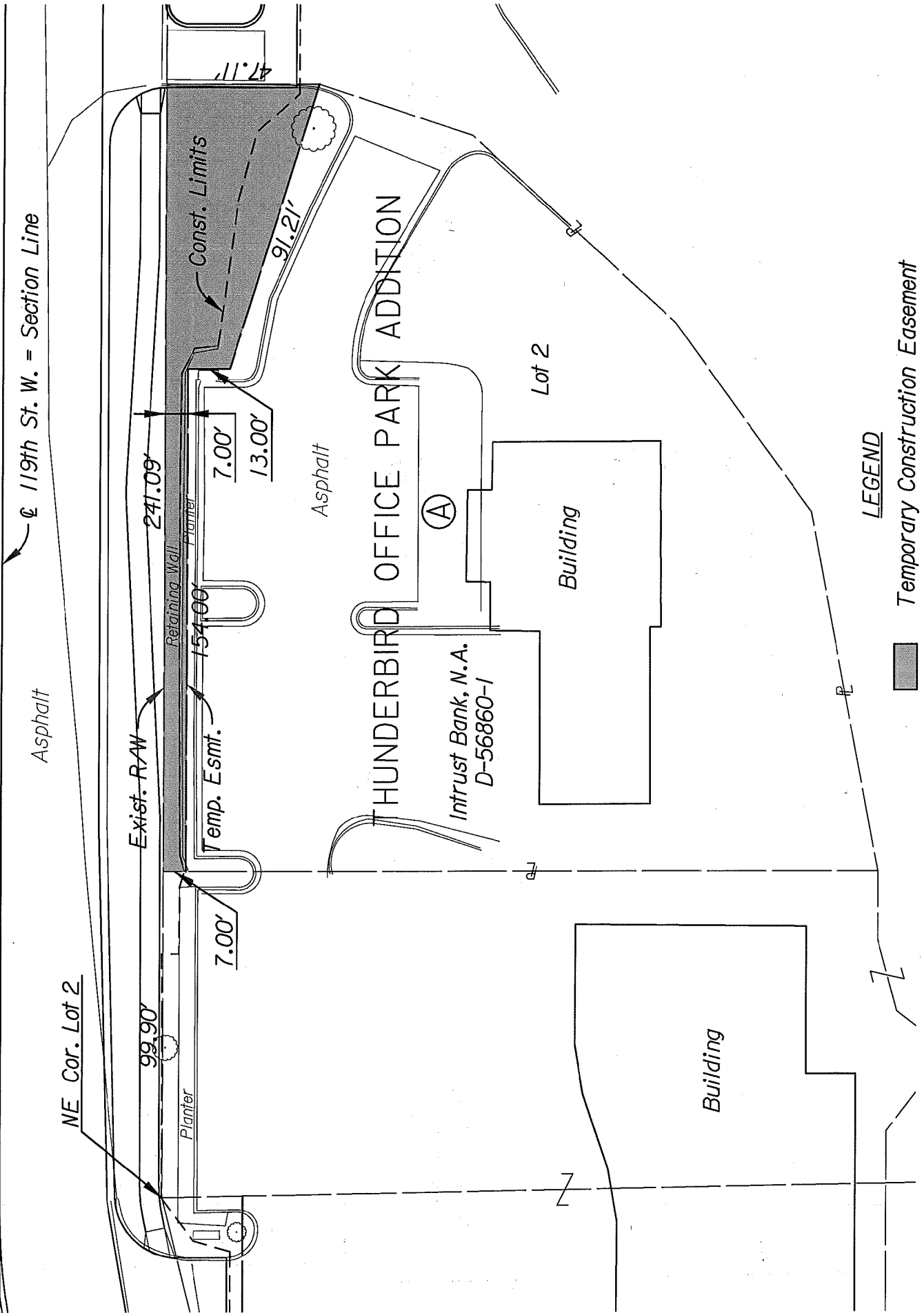
Temporary Construction Easement

March 10, 2010

TRACT MAP D-56860-1 TEMPORARY CONSTRUCTION EASEMENT



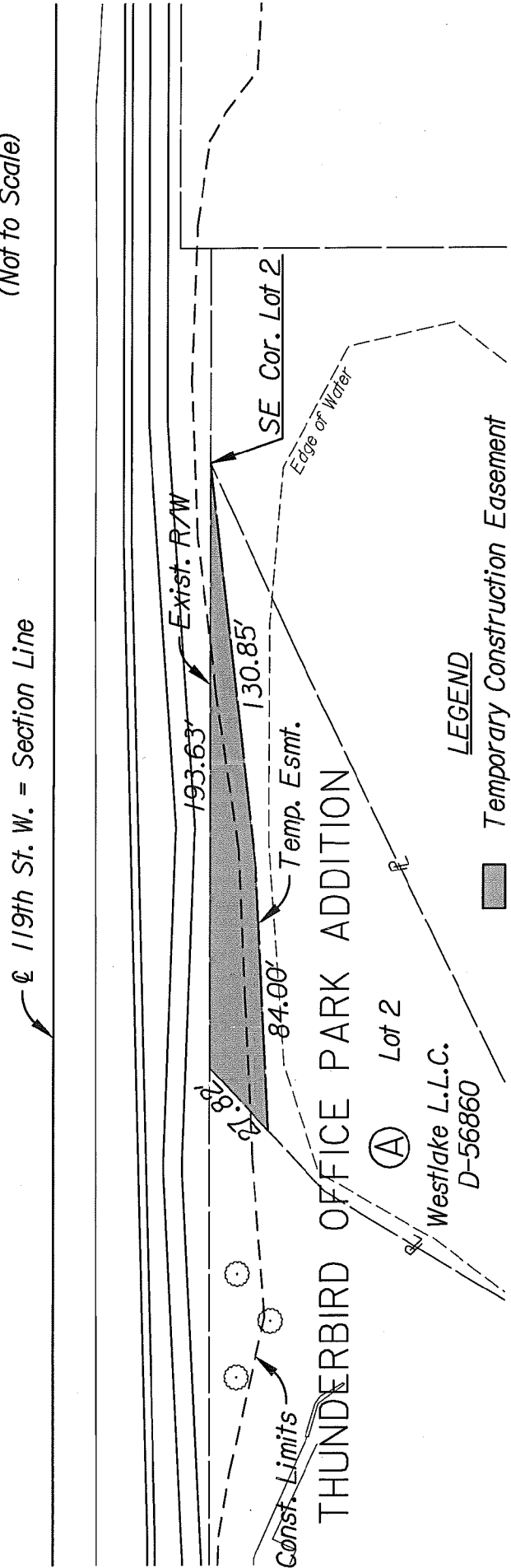
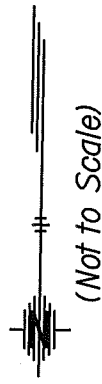
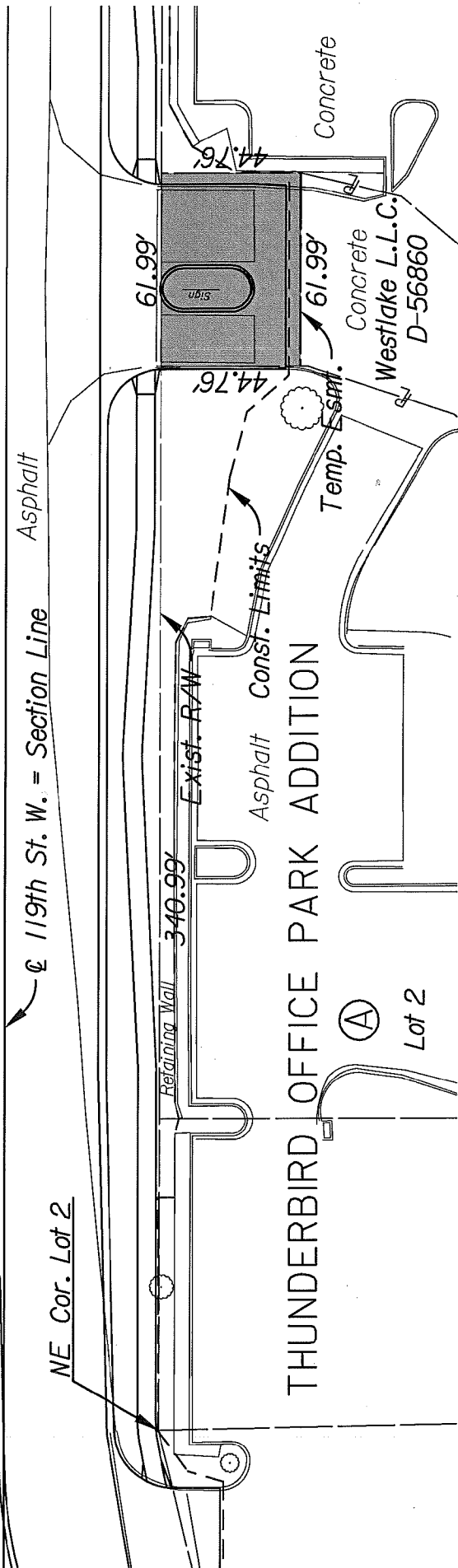
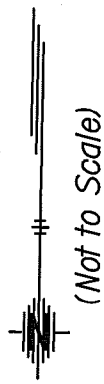
(Not to Scale)



March 10, 2010

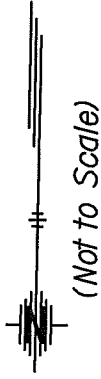
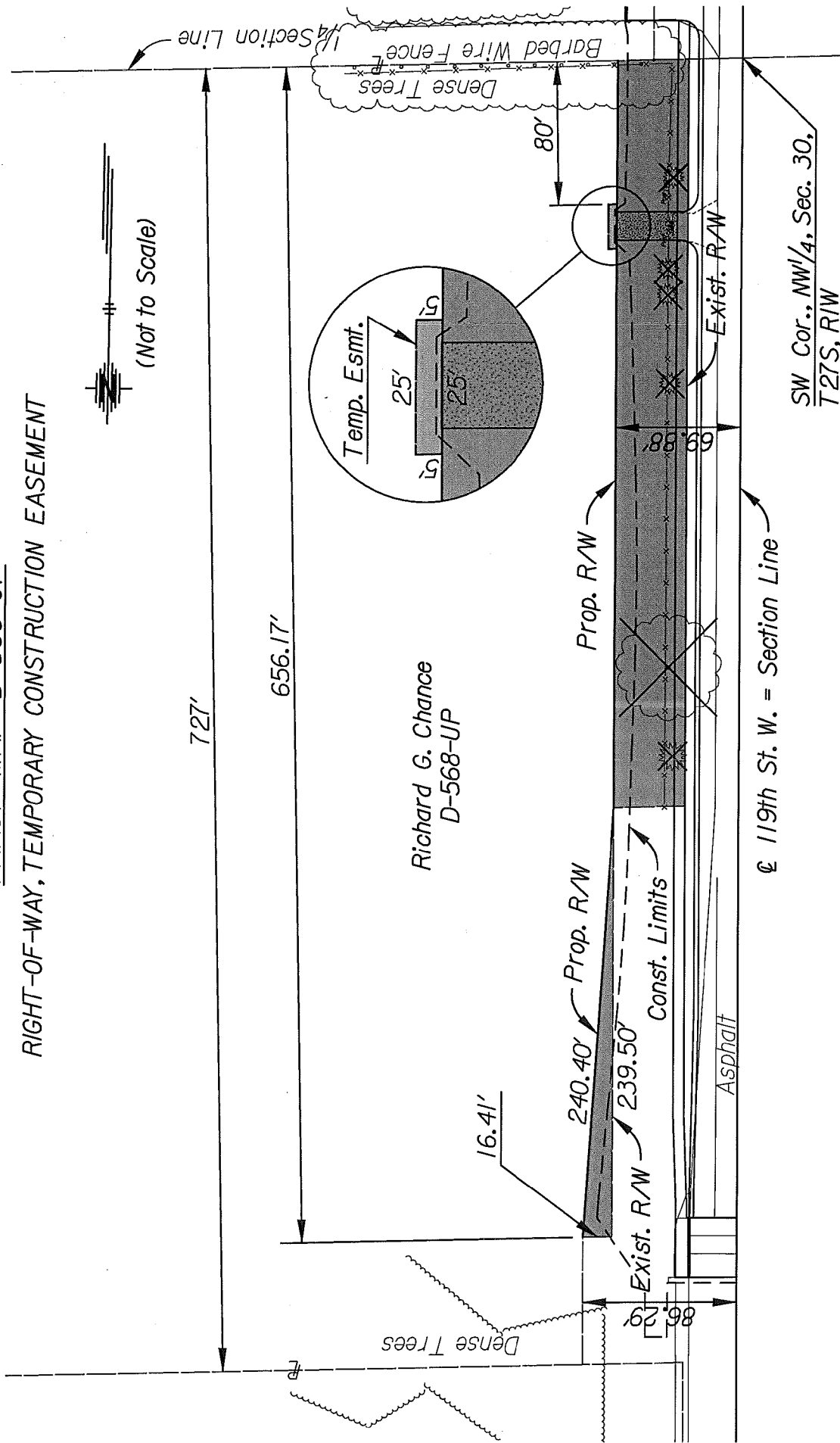
TRACT MAP D-56860

TEMPORARY CONSTRUCTION EASEMENT



TRACT MAP D-568-UP

RIGHT-OF-WAY, TEMPORARY CONSTRUCTION EASEMENT



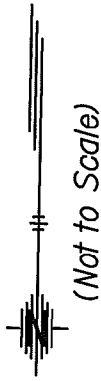
LEGEND

- Proposed Right-of-Way
- Temporary Construction Easement

Contractor will remove trees
as needed for construction.

TRACT MAP D-61683

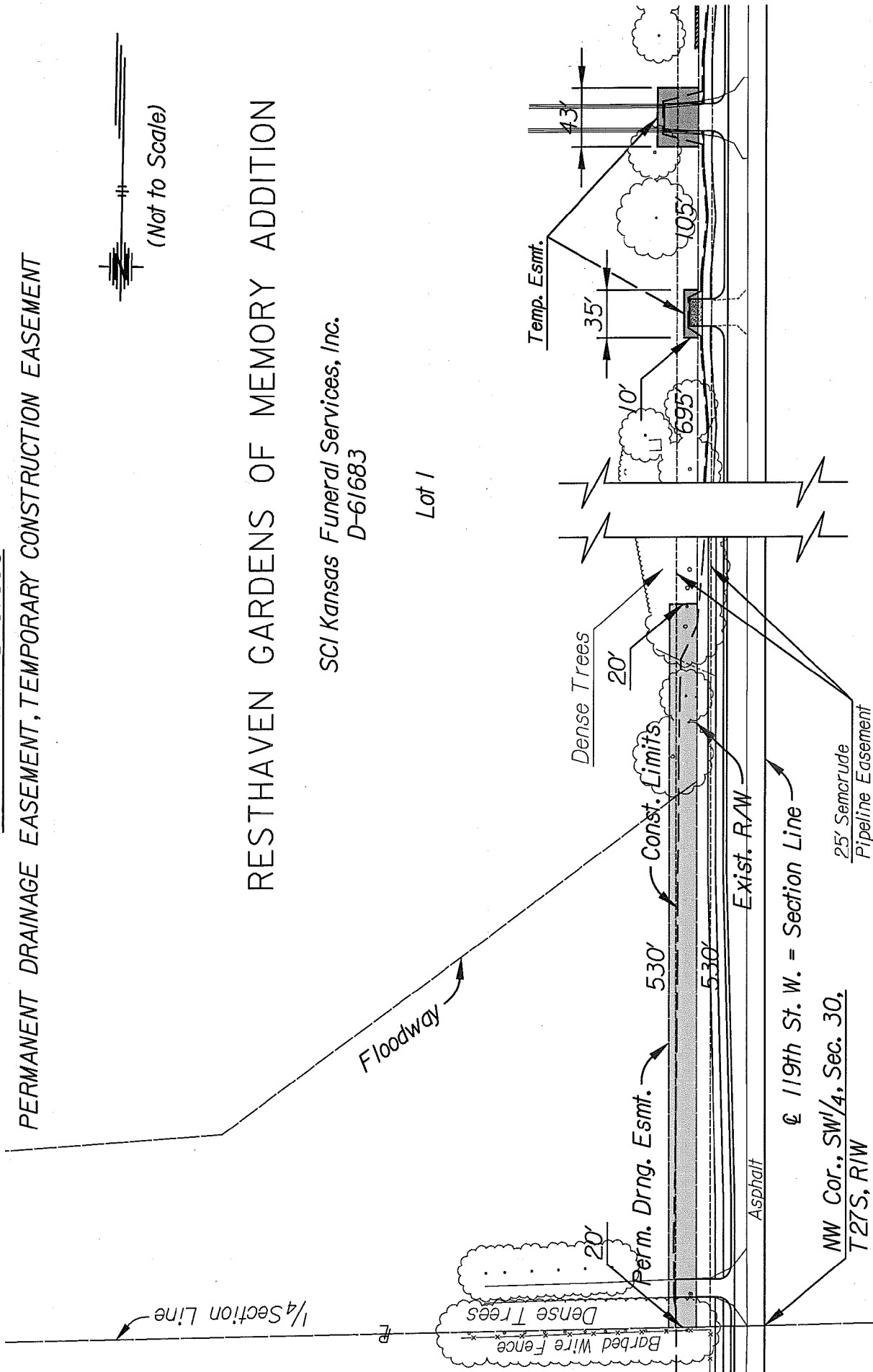
PERMANENT DRAINAGE EASEMENT, TEMPORARY CONSTRUCTION EASEMENT



RESTHAVEN GARDENS OF MEMORY ADDITION

SCI Kansas Funeral Services, Inc.
D-61683

Lot 1



LEGEND

Permanent Drainage Easement

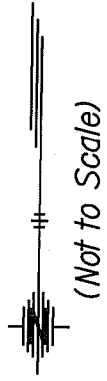
Temporary Construction Easement

Contractor will remove trees
as needed for construction.

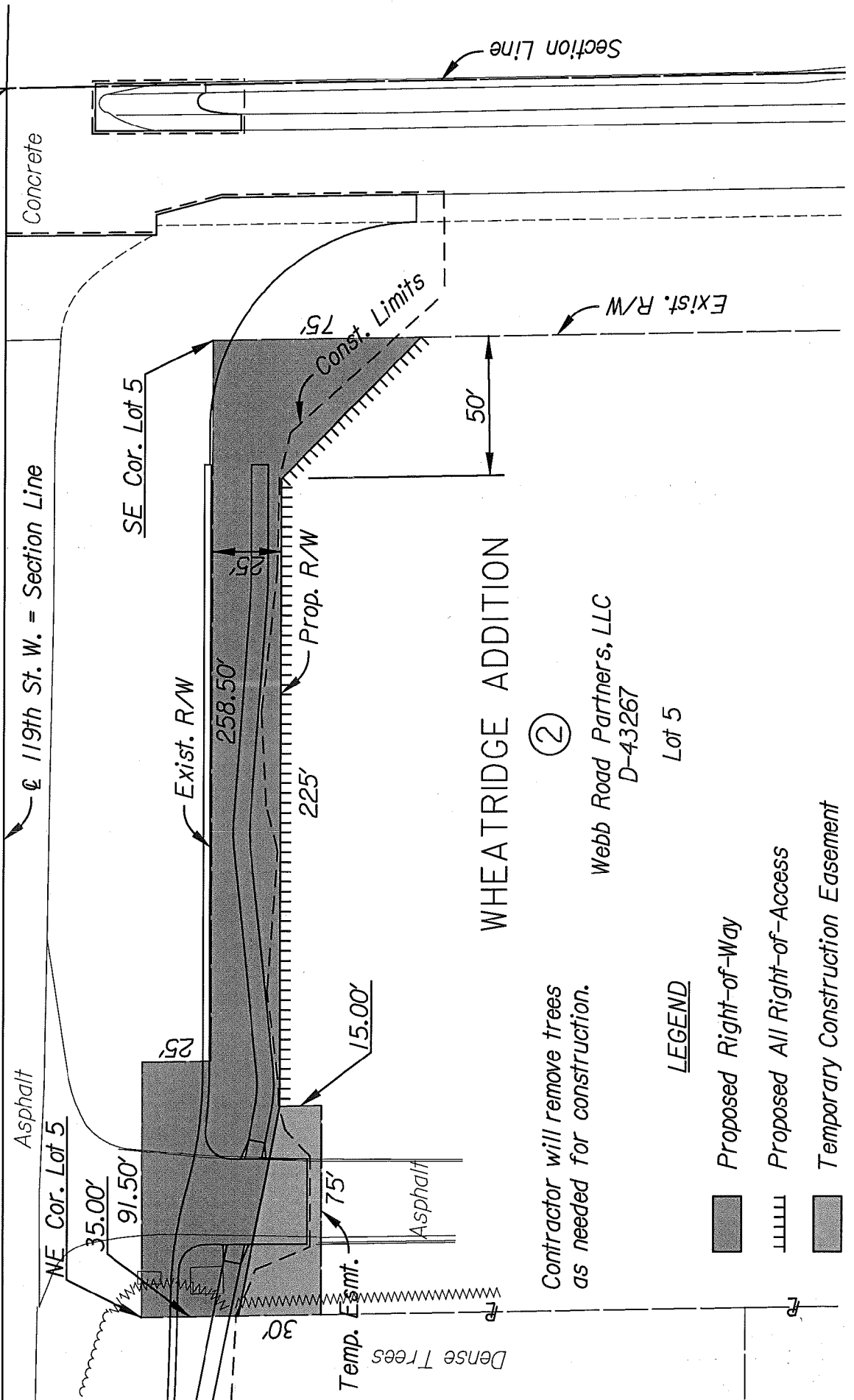
March 11, 2010

TRACT MAP D-43267

RIGHT-OF-WAY, ALL RIGHT-OF-ACCESS, TEMPORARY CONSTRUCTION EASEMENT



SE Cor., Sec. 25,
T27S, R2W



WHEATRIDGE ADDITION

②

Webb Road Partners, LLC
D-43267

Lot 5

Contractor will remove trees
as needed for construction.

LEGEND

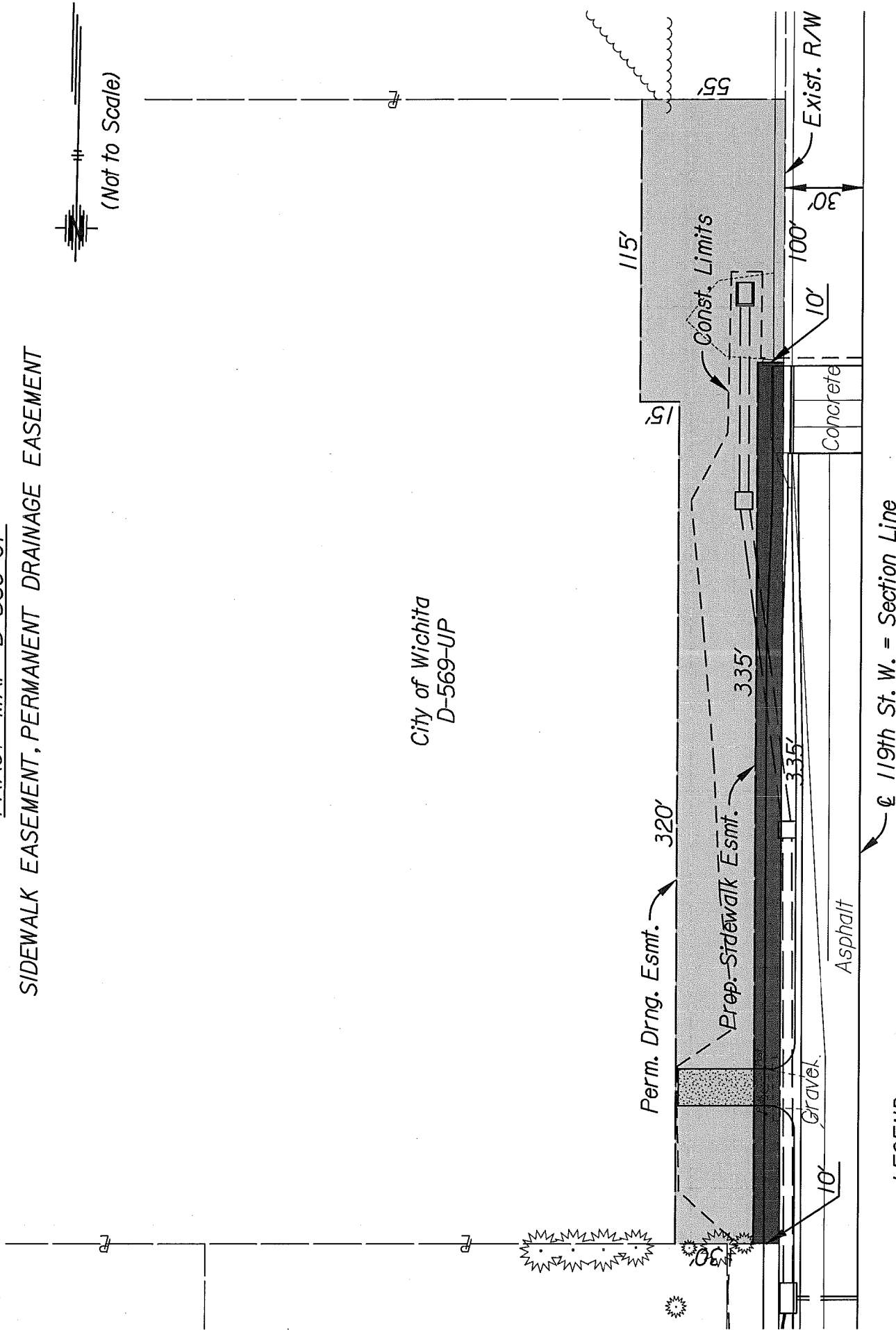
- Proposed Right-of-Way
- Proposed All Right-of-Access
- Temporary Construction Easement

TRACT MAP D-569-UP

SIDEWALK EASEMENT, PERMANENT DRAINAGE EASEMENT

(Not to Scale)

City of Wichita
D-569-UP

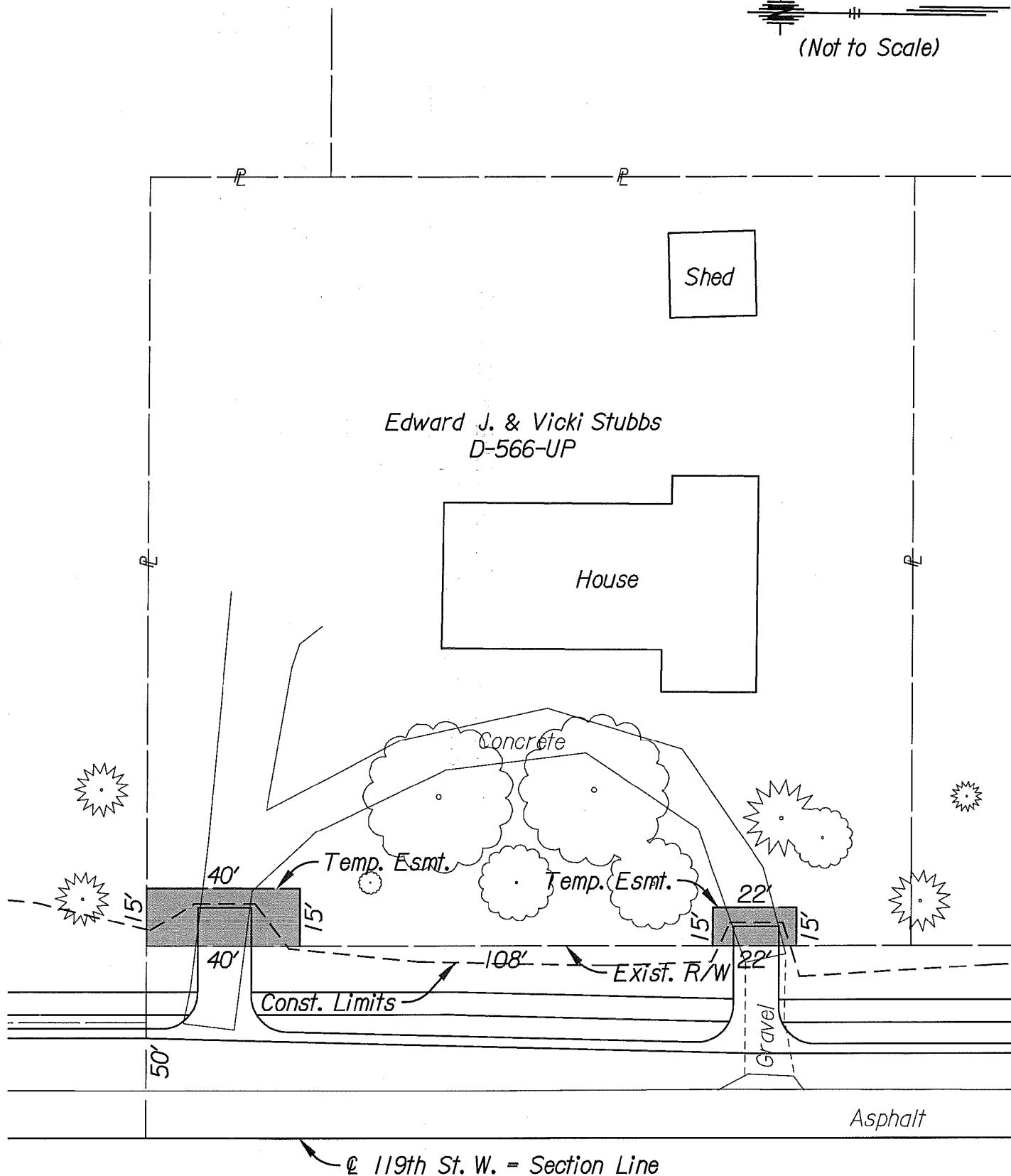
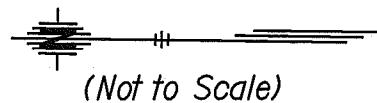


⊕ 119th St. W. = Section Line

LEGEND

- Proposed Sidewalk Easement
- Permanent Drainage Easement

TRACT MAP D-566-UP
TEMPORARY CONSTRUCTION EASEMENT



LEGEND

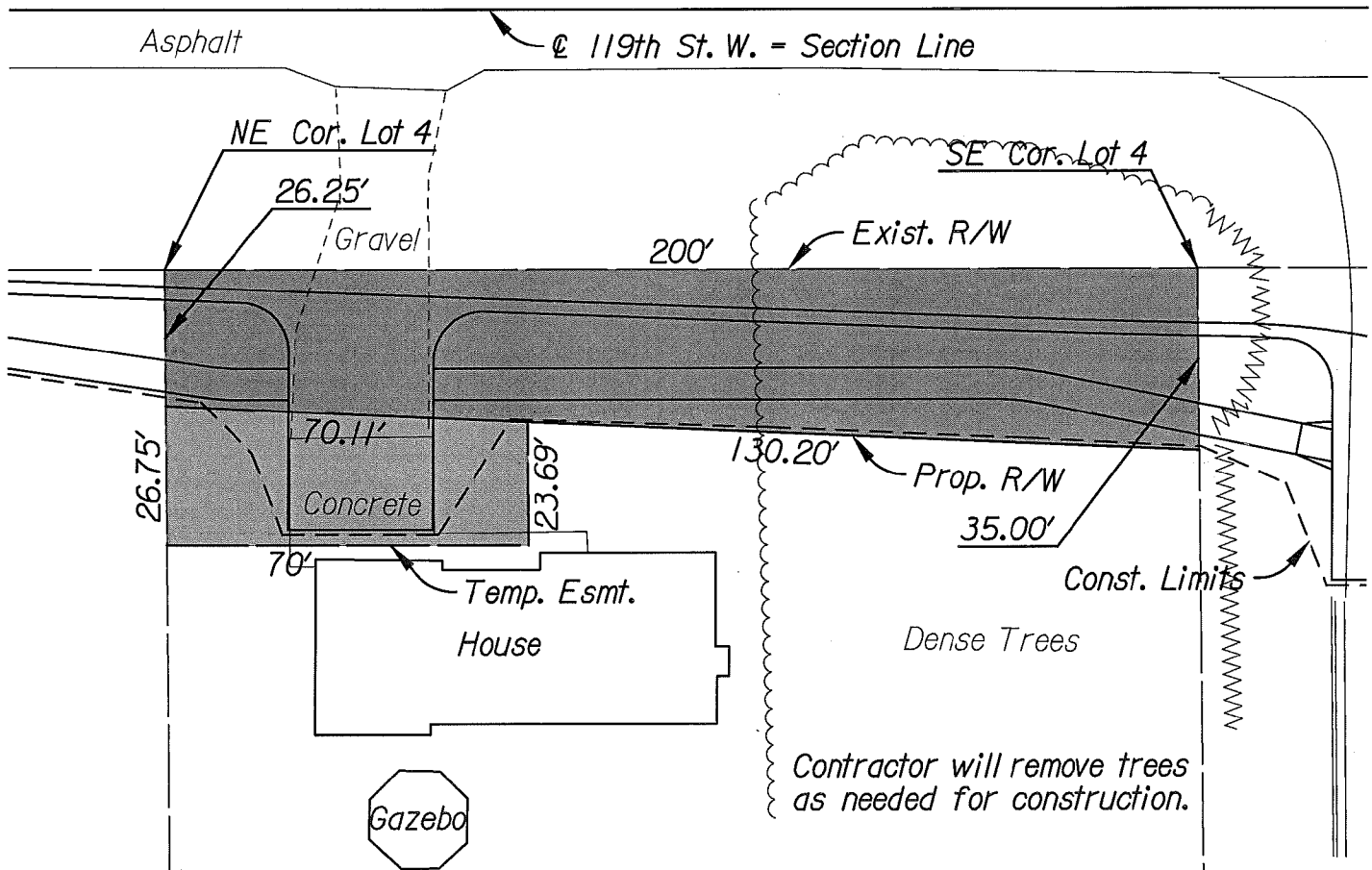
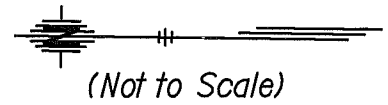


Temporary Construction Easement

March 15, 2010

TRACT MAP D-43266

RIGHT-OF-WAY, TEMPORARY CONSTRUCTION EASEMENT



WHEATRIDGE ADDITION

②

Brad D. & Stacy M. Nilles
D-43266

Lot 4

LEGEND



Proposed Right-of-Way



Temporary Construction Easement

March 15, 2010

CITY OF WICHITA
City Council Meeting
April 13, 2010

TO: Mayor and City Council Members

SUBJECT: Acquisition by Eminent Domain of Tracts Required for the 47th Street South from Meridian to Seneca Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real properties.

Background: On December 9, 2008, the City Council approved funding to acquire right-of-way for a project to improve 47th Street South from Meridian to Seneca from two lanes with open ditches to five lanes. There will be four lanes of traffic and a center two-way turn lane. Landscaping will also be installed in the available right of way. Ditches will be replaced with a storm water sewer system and sidewalks will be built along both the north and south sides of 47th. The project requires the acquisition of all or part of twelve tracts. The project is partially funded with Federal money administered by the State. To be eligible for these funds, right of way must be acquired and certified by the end of September, 2010.

Analysis: Appraisals and review appraisals have been ordered on all tracts per Federal requirements. Once valuation is established, offers will be made on all tracts and negotiations initiated. To meet the timing for certification, at this time it is necessary to complete the administrative steps to approve the use of eminent domain. No formal actions to formally initiate an eminent domain action with the courts will be taken until after offers have been made and negotiated. If an action is formally initiated, staff will continue to negotiate with the owners during the process.

Financial Considerations: The cost of these acquisitions will be paid for with general obligation bonds.

Goal Impact: The acquisition of these parcels is necessary to ensure efficient infrastructure in a rapidly growing part of the City.

Legal Considerations: The City is authorized by law to commence eminent domain proceedings to acquire this property.

Recommendation/Action: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property and directing the City Attorney to file the appropriate proceedings in the District court to accomplish such acquisition.

Attachments: Tract maps, condemnation resolution and condemnation ordinance.

ORDINANCE NO. 48-720

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PRIVATE PROPERTY, EASEMENTS AND RIGHT-OF-WAY THEREIN, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY FOR THE 47TH STREET SOUTH, MERIDIAN AVENUE TO SENECA AVENUE PROJECT IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS; DESIGNATING THE LANDS REQUIRED FOR SUCH PURPOSES AND DIRECTING THE CITY ATTORNEY TO FILE A PETITION IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR ACQUISITION OF THE LANDS AND EASEMENTS THEREIN TAKEN AND PROVIDING FOR PAYMENT OF THE COST THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it be and is hereby declared to be a public necessity to acquire by eminent domain proceedings for the purpose of public right-of-way for the development of infrastructure associated with the development of the 47th Street South, Meridian to Seneca project in the City of Wichita, Sedgwick County, Kansas, the lands and easements hereinafter described in Section 2.

SECTION 2. That the description of the lands and title therein necessary for the purpose of such action is as follows:

Clear and complete title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

A Proposed 10.00 feet Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

The South 10.00 feet of the following described tract of land:

A tract beginning 615 feet West of the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence West 66 feet; thence North 319.178 feet; thence East 66 feet; thence South 319.178 feet to the point of beginning, except the South 40 feet thereof for road purposes and

A Proposed 20.00 feet Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

The North 20.00 feet of the South 50.00 feet of the following described tract of land:

Beginning at a point 1362 feet West of the SE Corner of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence North 330 feet; thence West 121 feet; thence South 330 feet; thence East 121 feet to the point of beginning subject to Road Right of Way of Record and

A Proposed 20.00' Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

The North 20.00 feet of the South 50.00 feet of the following described tract of land:

A tract of land in the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point 681 feet West of the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East, thence North 639 feet; thence West 340.5 feet; thence South 639 feet; thence East 340.5 feet to place of beginning subject to Road Right of Way of Record and

A Proposed 20.00 feet Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

The north 20.00 feet of the South 50.00 feet of the following described tract of land:

Beginning 1362 feet West of the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence North 330 feet; thence East 342.5 feet; thence South 330 feet; thence West to the point of beginning subject to Road Right of Way of Record and

A Proposed Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

Commencing at the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence West along the South Line of said SE 1/4 a distance of 225.00 feet; thence North parallel to the East Line of said SE 1/4 a distance of 40.00 feet to the Point of Beginning; thence West along the North Line of that part condemned in Case 92C-465 in the District Court of Sedgwick County, Kansas a distance of 164.00 feet; thence South along the West Line of that part condemned in Case 92C-465 a distance of 10.00 feet; thence West parallel to the South Line of said SE 1/4 a distance of 160.00 feet; thence North parallel to the East Line of said SE 1/4 a distance of 20.00 feet; thence East parallel to the South Line of said SE 1/4 a distance of 324.00 feet; thence South parallel to the East Line of said SE 1/4 a distance of 10.00 feet to the Point of Beginning and

And temporary construction easements for driveway, drainage and road construction in and to the following-described tracts, to-wit:

A Temporary Construction Easement in Lot 8, Block 19, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

The south 5.00 feet of the West 50.00 feet of Lot 8, Block 19, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas and

A Temporary Construction Easement in Lot 8, Block 18, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

The south 5.00 feet of the west 80.00 feet of Lot 8, Block 18, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas and

A Temporary Construction Easement in Lot 9, Block 17, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

A portion of Lot 9, Block 17, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, beginning at the southwest corner of said Lot 9; thence east along the south line of said Lot 9 a distance of 129.2 feet to the southeast corner of said Lot 9; thence north along the east line of said Lot 9 a distance of 5.00 feet; thence west parallel to the south line of said Lot 9 a distance of 111.84 feet; thence northwesterly a distance of 24.53 feet to a point on the west line of said Lot 9; thence south along the west line of said Lot 9 a distance of 22.38 feet to the point of beginning and

A Temporary Construction Easement in Lot 9, Block 18, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

The south 5.00 feet of the east 75.00 feet of Lot 9, Block 18, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas and

A 5.00 feet Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

The North 5.00 feet of South 15.00 feet of the following described tract of land:

A tract beginning 615 feet West of the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence West 66 feet; thence North 319.178 feet; thence East 66 feet; thence South 319.178 feet to the point of beginning, except the South 40 feet thereof for road purposes and

A Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

The north 5.00 feet of the following described tract of land:

The east 40 feet of the Northwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas except south 835 feet thereof and except for the North 50 feet thereof for road right-of-way.

AND

Commencing at the Northwest Corner of the West Half of the Northeast Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east along the north line of said Northeast Quarter a distance of 150 feet; thence south a distance of 50.00 feet to the northwest corner of the City of Wichita Drainage Dedication; thence continuing south along the east line of said Drainage Dedication a distance of 10.00 feet; thence northeasterly a distance of 11.20 feet to a point 55.00 feet normally distant south of the north line of said Northeast Quarter; thence east parallel to the North Line of said Northeast Quarter a distance of 437.15 feet; thence southeasterly a distance of 7.07 feet to a point 60.00 feet normally distant south of the north line of said Northeast Quarter; thence east parallel to the North Line of said Northeast Quarter a distance of 15.00 feet; thence northeasterly a distance of 7.07 feet to a point 55.00 feet normally distant south of the north line of said Northeast Quarter; thence east parallel to the North Line of said Northeast Quarter a distance of 374.64 feet to a point on the east line of the west half of said Northeast Quarter; thence north along the east line of the west half of said Northeast Quarter a distance of 5.00 feet; thence west parallel to the North Line of said Northeast Quarter a distance of 846.79 feet to the point of beginning and

A Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

Commencing at the SE Corner of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence S 89° 53' 03" W (assumed) along the south line of said Section 18 a distance of 1362 feet; thence N 00° 03' 03" E a distance of 50.00 feet to the Point of Beginning; thence continuing N 00° 03' 03" E a distance of 7.50 feet; thence S 89° 53' 03" W parallel to the south line of said Section 18 a distance of 4.44 feet; thence N 45° 06' 57" W a distance of 22.63 feet; thence S 89° 53' 03" W parallel to the south line of said Section 18 a distance of 30.09 feet; thence S 44° 53' 03" W a distance of 22.63 feet; thence S 89° 53' 03" W parallel to the south line of said Section 18 a distance of 54.47 feet; thence S 00° 03' 03" W a distance of 7.50 feet; thence N 89° 53' 03" E parallel to the south line of said Section 18 a distance of 121.00 feet to the Point of Beginning and

A Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

Commencing at the SE Corner of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence S 89° 53' 03" W (assumed) along the south line of said Section 18 a distance of 1483 feet; thence N 00° 03' 03" E a distance of 50.00 feet to the Point of Beginning; thence continuing N 00° 03' 03" E a distance of 5.00 feet; thence S 89° 53' 03" W parallel to the south line of said Section 18 a distance of 0.97 feet; thence N 45° 06' 57" W a distance of 22.63 feet; thence S 89° 53' 03" W parallel to the south line of said Section 18 a distance of 35.15 feet; thence S 44° 53' 03" W a distance of 20.74 feet; thence S 89° 53' 03" W parallel to the south line of said Section 18 a distance of 66.51 feet; thence S 00° 03' 03" W a distance of 5.00 feet; thence N 89° 53' 03" E parallel to the south line of said Section 18 a distance of 132.00 feet to the Point of Beginning and

A 5.00' Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

The North 5.00 feet of the South 55.00 feet of the following described tract of land:

A tract of land in the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point 681 feet West of the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East, thence North 639 feet; thence West 340.5 feet; thence South 639 feet; thence East 340.5 feet to place of beginning subject to Road Right of Way of Record and

A Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

Commencing at the SE Corner of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence S 89° 53' 03" W (assumed) along the south line of said Section 18 a distance of 1362 feet; thence N 00° 03' 03" E a distance of 50.00 feet to the Point of Beginning; thence continuing N 00° 03' 03" E a distance of 7.50 feet; thence S 86° 31' 29" E a distance of 71.85 feet; thence N 89° 53' 03" E parallel to the south line of said Section 18 a distance of 73.73 feet; thence N 44° 23' 53" E a distance of 14.72 feet; thence N 89° 53' 03" E parallel to the south line of said Section 18 a distance of 10.94 feet; thence S 45° 06' 57" E a distance of 14.85 feet; thence N 89° 53' 03" E parallel to the south line of said Section 18 a distance of 163.82 feet; thence S 00° 03' 03" W a distance of 3.00 feet; thence S 89° 53' 03" W parallel to the south line of said Section 18 a distance of 340.41 feet to the Point of Beginning and

A 5.00' Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

Commencing at the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence West along the South Line of said SE 1/4 a distance of 225.00 feet; thence North parallel to the East Line of said SE 1/4 a distance of 50.00 feet to the Point of Beginning; thence West parallel to the South Line of said SE 1/4 a distance of 324.00 feet; thence North parallel to the East Line of said SE 1/4 a distance of 5.00 feet; thence East parallel to the South Line of said SE 1/4 a distance of 324.00 feet; thence South parallel to the East Line of said SE 1/4 a distance of 5.00 feet to the Point of Beginning and

A Temporary Construction Easement in Lot 9, Block 19, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

A portion of Lot 9, Block 19, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, beginning at the southeast corner of said Lot 19; thence north along the east line of said Lot 19 a distance of 5.00 feet; thence west parallel to the south line of said Lot 19 and distance of 65.79 feet; thence northwesterly a distance of 7.07 feet to a point 10.00 feet normally distant north of the south line of said Lot 19; thence west parallel to the south line of said Lot 19 a distance of 22.03 feet; thence southwesterly a distance of 7.07 feet to a point 5.00 feet normally distant north of the south line of said Lot 19; thence west parallel to the south line of said Lot 19 a distance of 12.18 feet to a point on the west line of said Lot 19; thence south along the west line of said Lot 19 a distance of 5.00 feet to the southwest corner of said Lot 19; thence east along the south line of said Lot 19 a distance of 110.00 feet to the point of beginning.

SECTION 3. That the City Attorney is hereby authorized and directed to commence proceedings in eminent domain in the District Court of Sedgwick County, Kansas, for the appropriation of said lands and determination of the compensation to be awarded for the taking thereof.

SECTION 4. That the costs of said acquisition when ascertained shall be paid from General Obligation Bonds to be issued for the costs of such improvements; PROVIDED, however, should the City of Wichita acquire said property (and said City hereby reserves its right to abandon the condemnation as to any of all tracts) that General Funds are available for said purpose as provided by law.

SECTION 5. That the costs of said acquisition shall be charged to the City of Wichita.

SECTION 6. That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 20th day of, April 2010.

CITY OF WICHITA

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

RESOLUTION NO. 10-097

A RESOLUTION DECLARING THE NECESSITY FOR ACQUIRING PRIVATE PROPERTY FOR THE USE OF THE CITY OF WICHITA IN CONNECTION WITH THE PLANNED 47th STREET SOUTH – MERIDIAN AVENUE TO SENECA AVENUE IMPROVEMENT PROJECT IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS;

WHEREAS, the governing body has previously authorized the study and the preliminary design of certain improvements for public right-of-way of 47th Street South from Meridian Avenue to Seneca Avenue in the City of Wichita; and

WHEREAS, such study and preliminary design has identified the need to acquire several parcels of private property in order to properly complete such improvements; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

SECTION 1. The governing body hereby declares it to be necessary to acquire certain private property in connection with improvement of 47th Street South from Meridian Avenue to Seneca Avenue.

SECTION 2. The City Engineer is directed to make or cause to be made a survey and description of the lands and/or interests to be acquired and to have such survey and description filed with the City Clerk.

SECTION 3. That this Resolution shall take effect and be in force from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 13th day of April, 2010.

CITY OF WICHITA

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

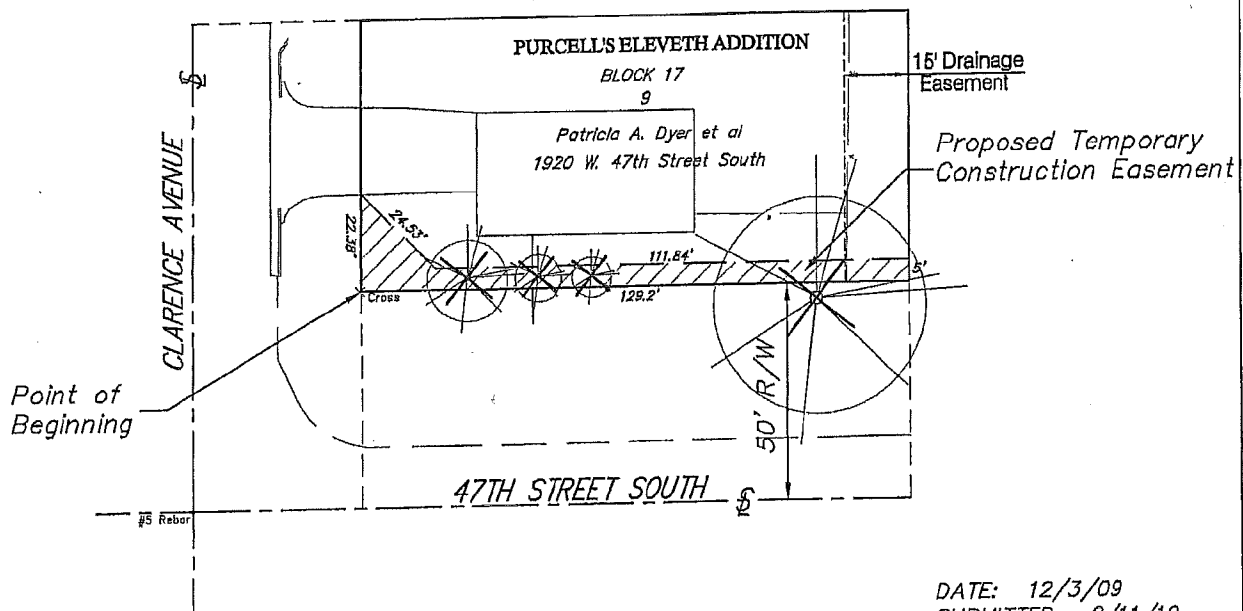
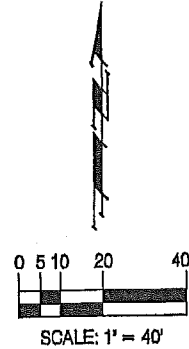
EXHIBIT

LEGAL DESCRIPTION:

A Temporary Construction Easement in Lot 9, Block 17, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

A portion of Lot 9, Block 17, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, beginning at the southwest corner of said Lot 9; thence east along the south line of said Lot 9 a distance of 129.2 feet to the southeast corner of said Lot 9; thence north along the east line of said Lot 9 a distance of 5.00 feet; thence west parallel to the south line of said Lot 9 a distance of 111.84 feet; thence northwesterly a distance of 24.53 feet to a point on the west line of said Lot 9; thence south along the west line of said Lot 9 a distance of 22.38 feet to the point of beginning.

Containing 797.1 Sq. Ft., more or less.



DATE: 12/3/09
SUBMITTED: 2/11/10



Project Number 05-10-E397

F: eng/47th South/Exhibits/Dyer-Temp.dwg

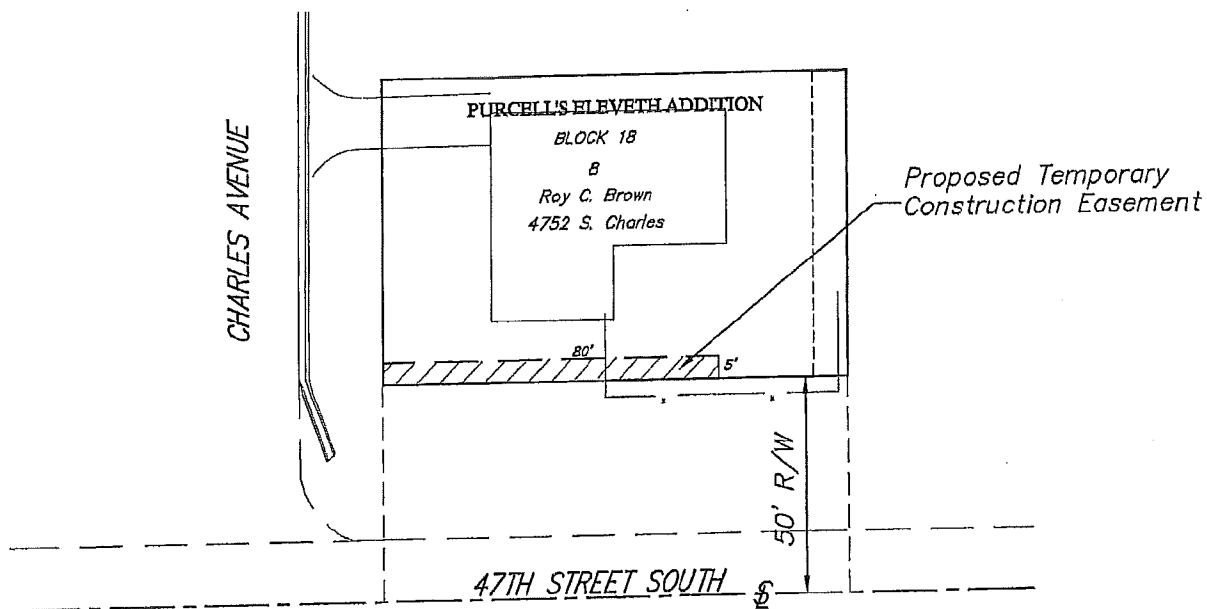
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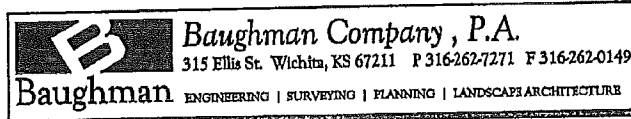
A Temporary Construction Easement in Lot 8, Block 18, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

The south 5.00 feet of the west 80.00 feet of Lot 8, Block 18, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas.

Containing 400.0 Sq. Ft., more or less.



DATE: 12/3/09
SUBMITTED: 2/11/10



Project Number 05-10-E397

F: eng/47th South/Exhibits/Brown-Temp.dwg

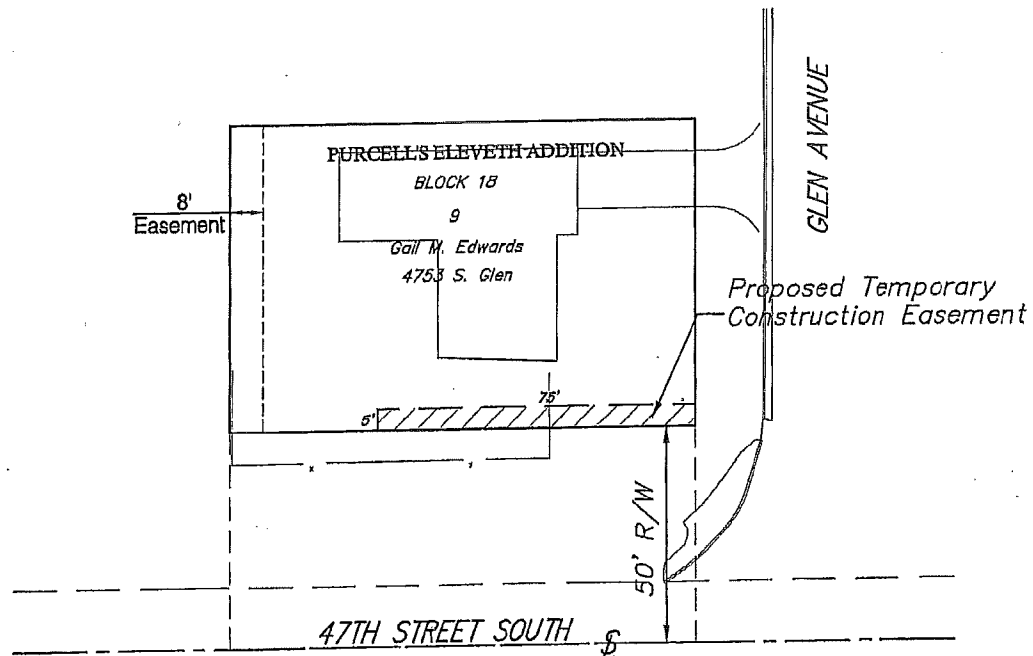
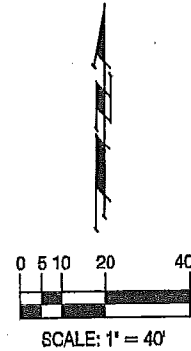
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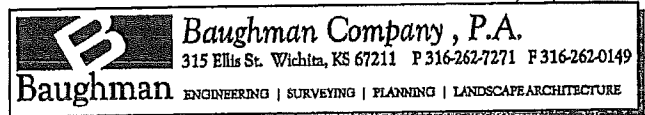
A Temporary Construction Easement in Lot 9, Block 18, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

The south 5.00 feet of the east 75.00 feet of Lot 9, Block 18, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas.

Containing 375.0 Sq. Ft., more or less.



DATE: 12/3/09
SUBMITTED: 2/11/10



Project Number 05-10-E397

F:eng/47th South/Exhibits/Edwards-Temp.dwg

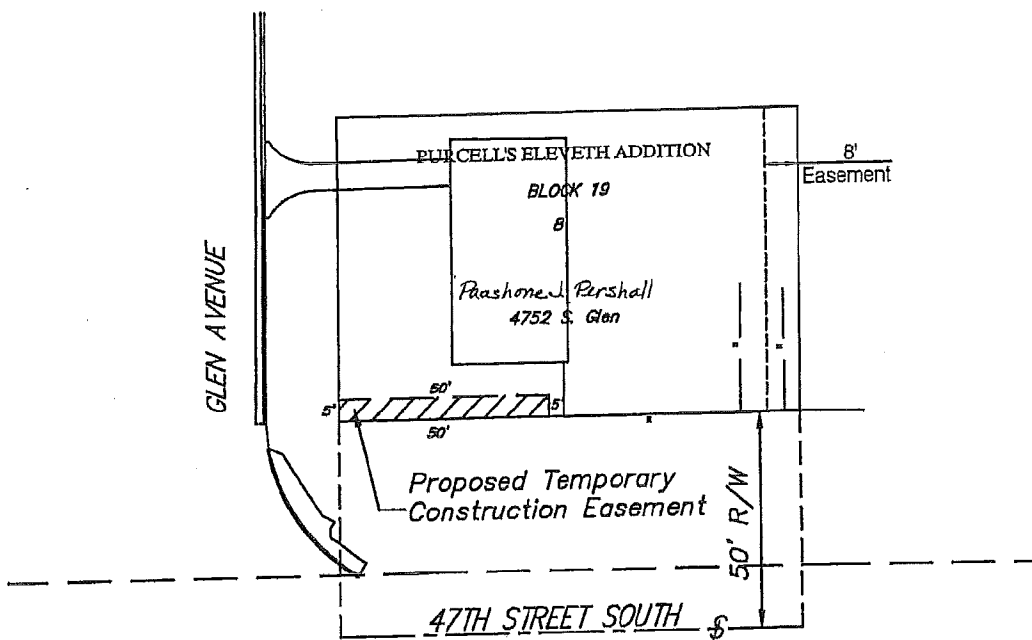
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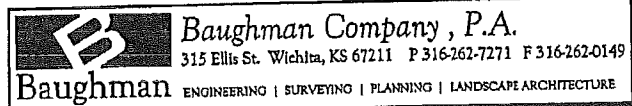
A Temporary Construction Easement in Lot 8, Block 19, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

The south 5.00 feet of the West 50.00 feet of Lot 8, Block 19, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas.

Containing 250.0 Sq. Ft., more or less.



DATE: 2/25/10
SUBMITTED: 2/25/10



Project Number 05-10-E397

F:eng/47th South/Exhibits/Bateman-Temp.dwg

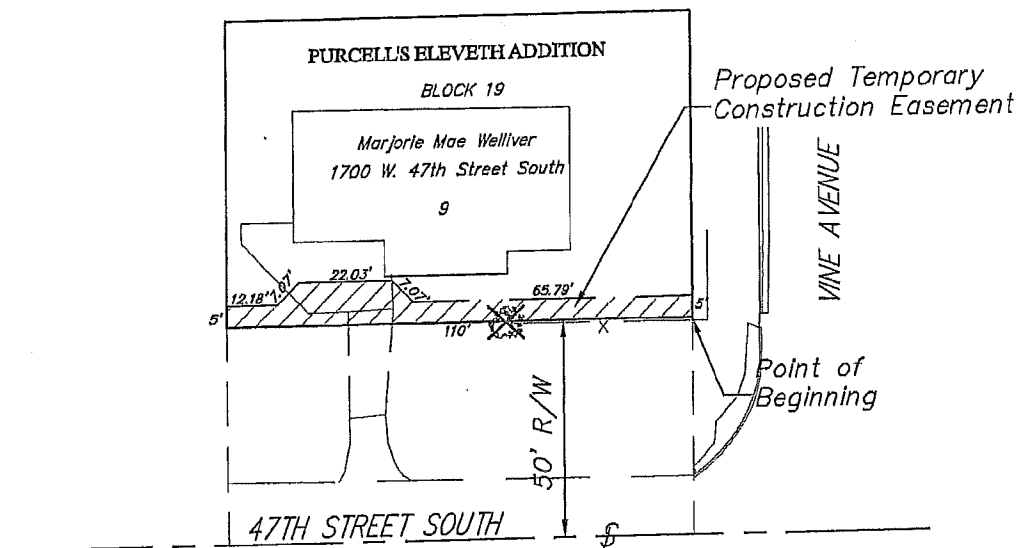
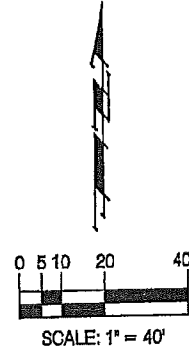
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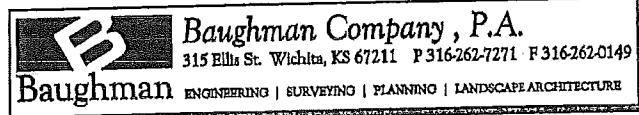
A Temporary Construction Easement in Lot 9, Block 19, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

A portion of Lot 9, Block 19, Purcell's Eleventh Addition to Wichita, Sedgwick County, Kansas, beginning at the southeast corner of said Lot 19; thence north along the east line of said Lot 19 a distance of 5.00 feet; thence west parallel to the south line of said Lot 19 a distance of 65.79 feet; thence northwesterly a distance of 7.07 feet to a point 10.00 feet normally distant north of the south line of said Lot 19; thence west parallel to the south line of said Lot 19 a distance of 22.03 feet; thence southwesterly a distance of 7.07 feet to a point 5.00 feet normally distant north of the south line of said Lot 19; thence west parallel to the south line of said Lot 19 a distance of 12.18 feet to a point on the west line of said Lot 19; thence south along the west line of said Lot 19 a distance of 5.00 feet to the southwest corner of said Lot 19; thence east along the south line of said Lot 19 a distance of 110.00 feet to the point of beginning.

Containing 685.1 Sq. Ft., more or less.



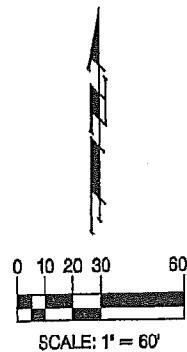
DATE: 12/03/09
SUBMITTED: 2/11/10



Project Number 05-10-E397

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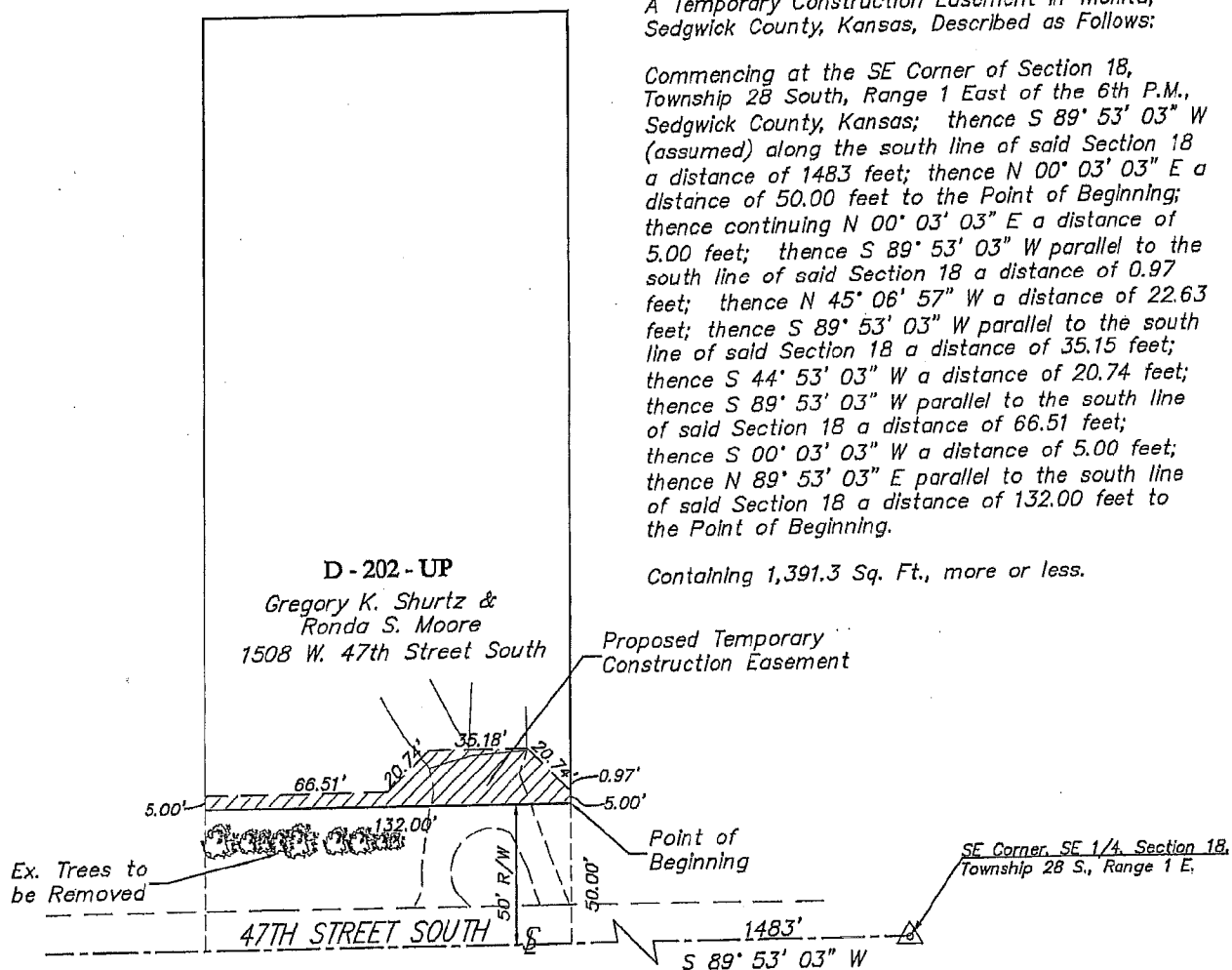


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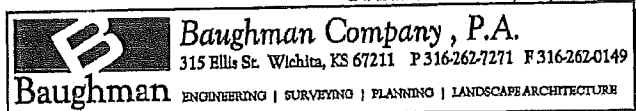
A Temporary Construction Easement in Wichita,
Sedgwick County, Kansas, Described as Follows:

Commencing at the SE Corner of Section 18,
Township 28 South, Range 1 East of the 6th P.M.,
Sedgwick County, Kansas; thence S 89° 53' 03" W
(assumed) along the south line of said Section 18
a distance of 1483 feet; thence N 00° 03' 03" E a
distance of 50.00 feet to the Point of Beginning;
thence continuing N 00° 03' 03" E a distance of
5.00 feet; thence S 89° 53' 03" W parallel to the
south line of said Section 18 a distance of 0.97
feet; thence N 45° 06' 57" W a distance of 22.63
feet; thence S 89° 53' 03" W parallel to the south
line of said Section 18 a distance of 35.15 feet;
thence S 44° 53' 03" W a distance of 20.74 feet;
thence S 89° 53' 03" W parallel to the south line
of said Section 18 a distance of 66.51 feet;
thence S 00° 03' 03" W a distance of 5.00 feet;
thence N 89° 53' 03" E parallel to the south line
of said Section 18 a distance of 132.00 feet to
the Point of Beginning.

Containing 1,391.3 Sq. Ft., more or less.



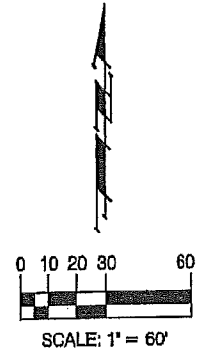
DATE: 1/05/10
SUBMITTED: 2/11/10



Project Number 05-10-E397

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EXHIBIT



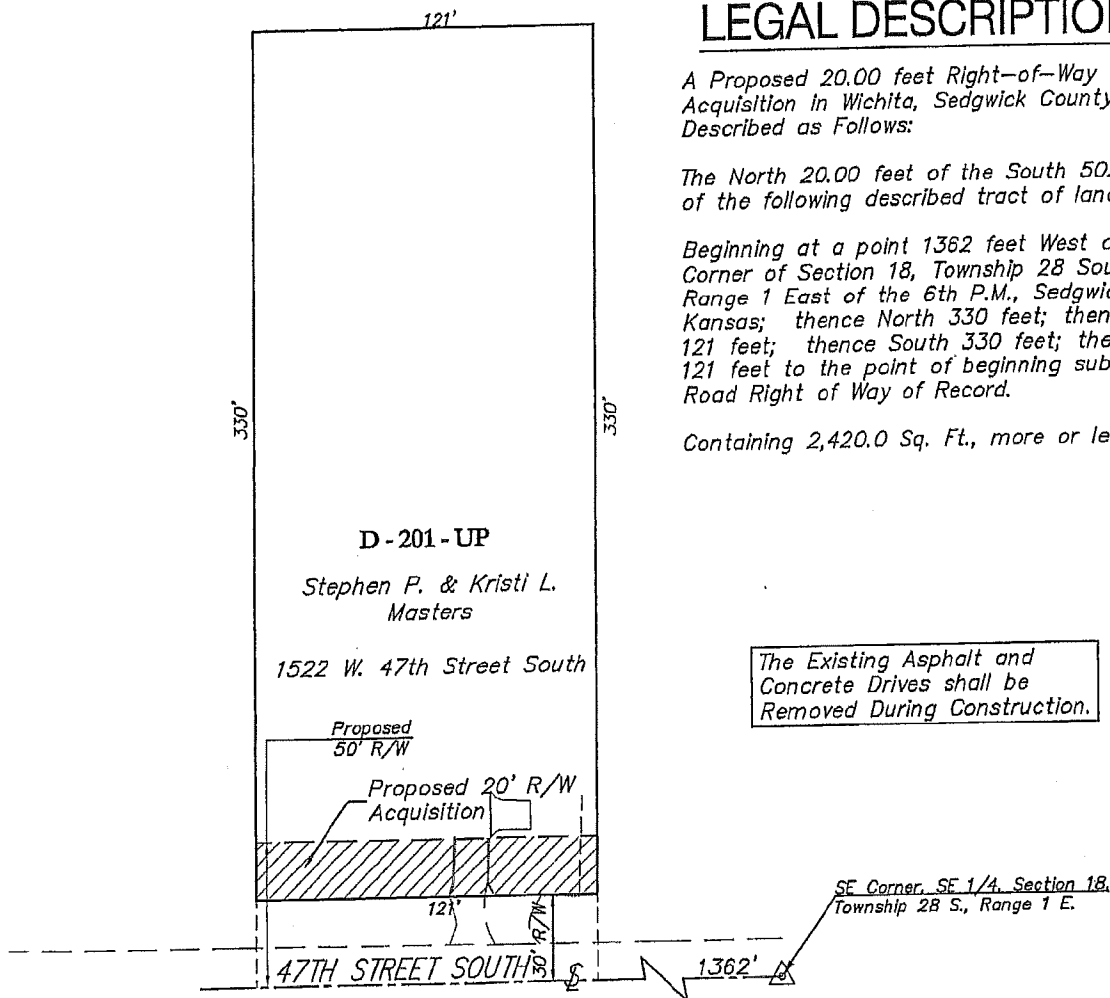
LEGAL DESCRIPTION:

A Proposed 20.00 feet Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

The North 20.00 feet of the South 50.00 feet of the following described tract of land:

Beginning at a point 1362 feet West of the SE Corner of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence North 330 feet; thence West 121 feet; thence South 330 feet; thence East 121 feet to the point of beginning subject to Road Right of Way of Record.

Containing 2,420.0 Sq. Ft., more or less.



The Existing Asphalt and Concrete Drives shall be Removed During Construction.

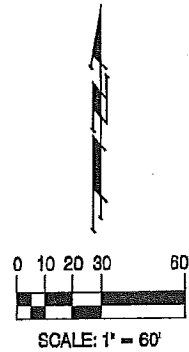
DATE: 5/20/08
SUBMITTED: 2/11/10

Project Number 05-10-E397

F:\eng\47th South\Exhibits\Masters.dwg

	Baughman Company, P.A.	
	315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149	
ENGINEERING SURVEYING PLANNING LANDSCAPE ARCHITECTURE		

EXHIBIT

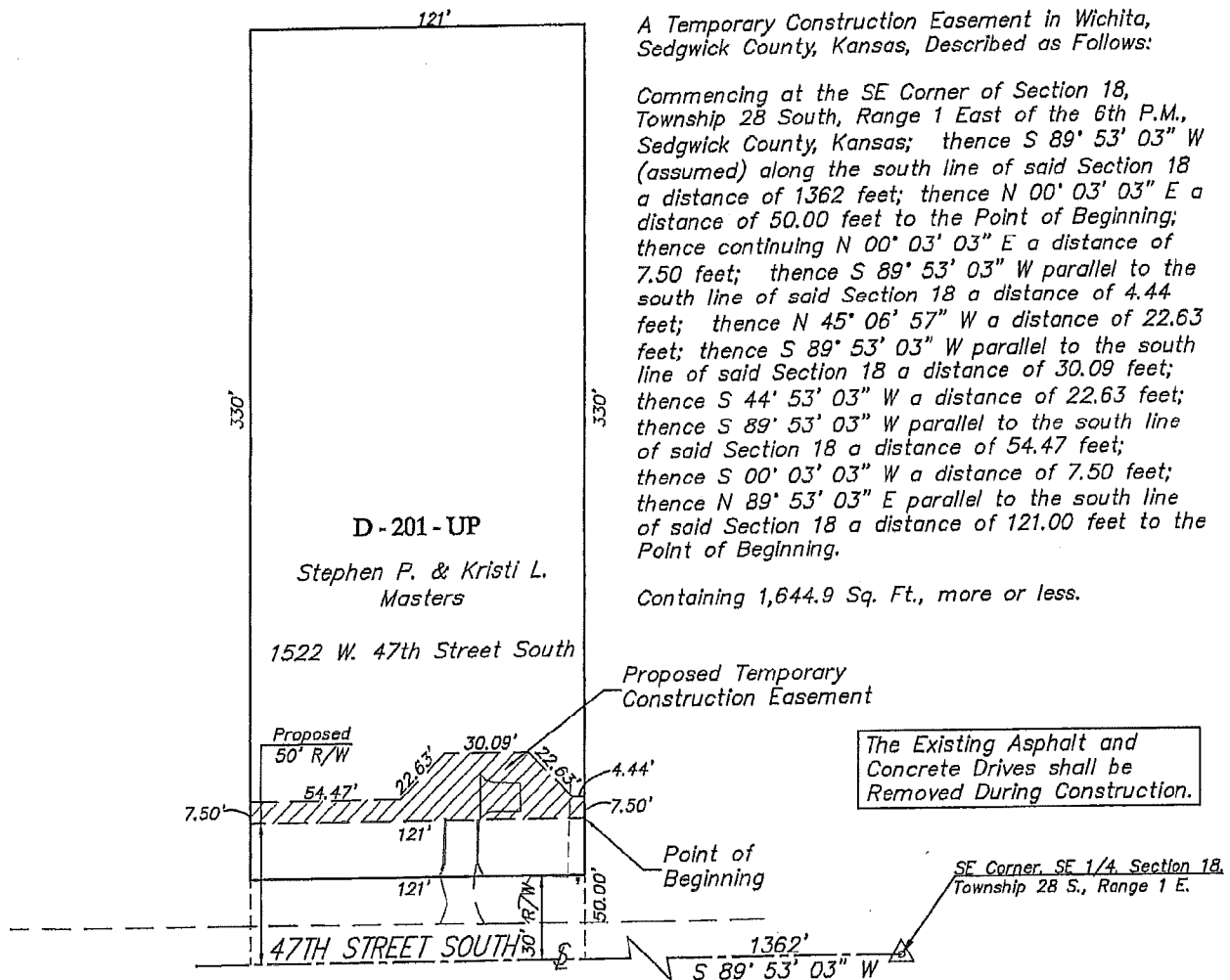


LEGAL DESCRIPTION:

A Temporary Construction Easement in Wichita,
Sedgwick County, Kansas, Described as Follows:

Commencing at the SE Corner of Section 18,
Township 28 South, Range 1 East of the 6th P.M.,
Sedgwick County, Kansas; thence S 89° 53' 03" W
(assumed) along the south line of said Section 18
a distance of 1362 feet; thence N 00° 03' 03" E a
distance of 50.00 feet to the Point of Beginning;
thence continuing N 00° 03' 03" E a distance of
7.50 feet; thence S 89° 53' 03" W parallel to the
south line of said Section 18 a distance of 4.44
feet; thence N 45° 06' 57" W a distance of 22.63
feet; thence S 89° 53' 03" W parallel to the south
line of said Section 18 a distance of 30.09 feet;
thence S 44° 53' 03" W a distance of 22.63 feet;
thence S 89° 53' 03" W parallel to the south line
of said Section 18 a distance of 54.47 feet;
thence S 00° 03' 03" W a distance of 7.50 feet;
thence N 89° 53' 03" E parallel to the south line
of said Section 18 a distance of 121.00 feet to the
Point of Beginning.

Containing 1,644.9 Sq. Ft., more or less.



DATE: 1/05/10
SUBMITTED: 2/11/10

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 05-10-E397

F:\eng\47th South\Exhibits\Masters-Temp.dwg

EXHIBIT

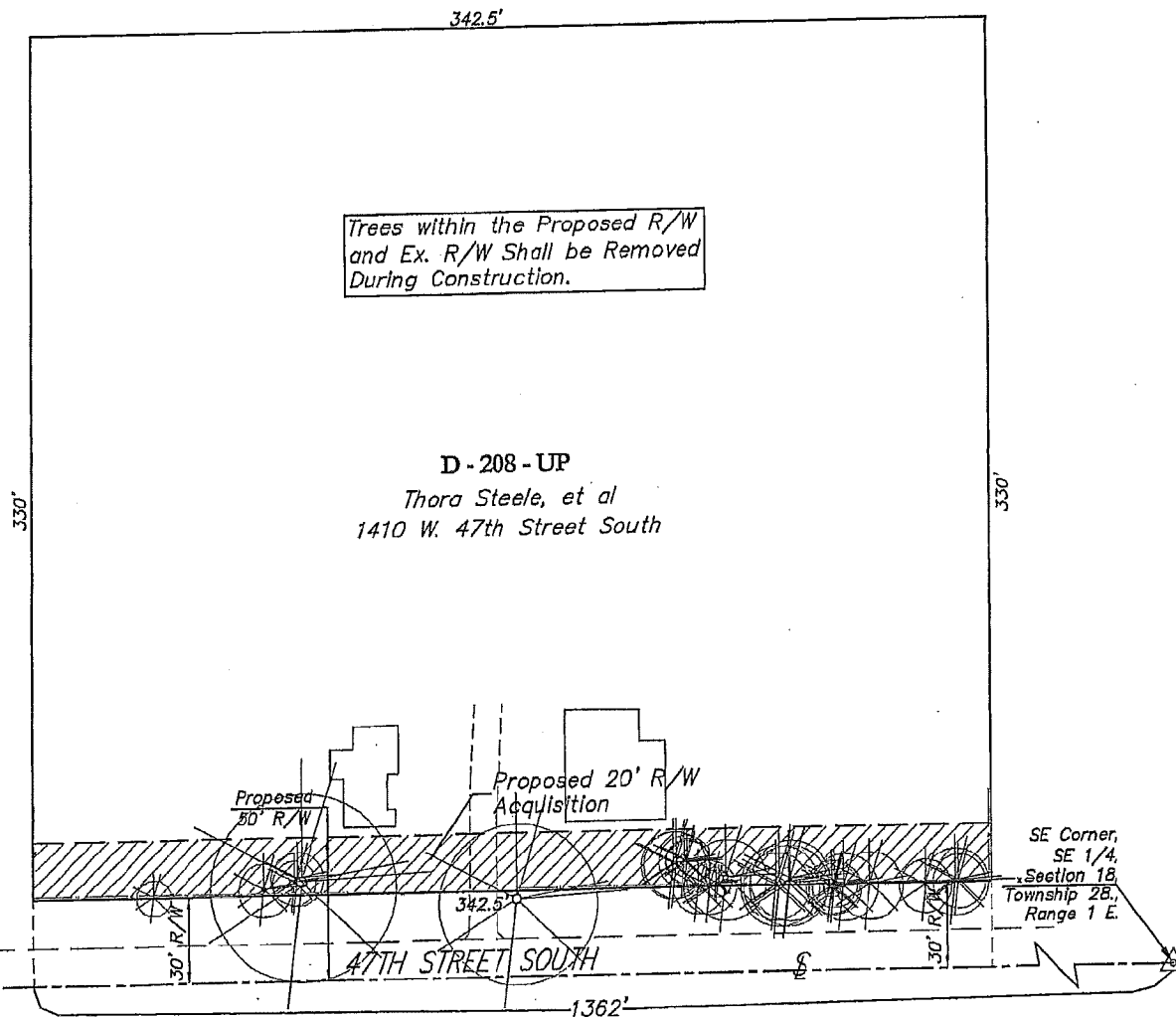
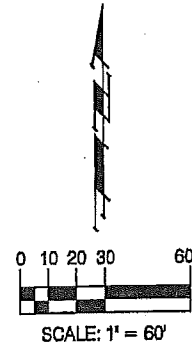
LEGAL DESCRIPTION:

A Proposed 20.00 feet Right-of-Way Acquisition In Wichita, Sedgwick County, Kansas, Described as Follows:

The north 20.00 feet of the South 50.00 feet of the following described tract of land:

Beginning 1362 feet West of the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence North 330 feet; thence East 342.5 feet; thence South 330 feet; thence West to the point of beginning subject to Road Right of Way of Record.

Containing 6,808.2 Sq. Ft., more or less.



Baughman Company, P.A.
 315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 05-10-E397

F:eng/MacArthur Meridian to Seneca/Exhibits/Steele.dwg

DATE: 2/11/10

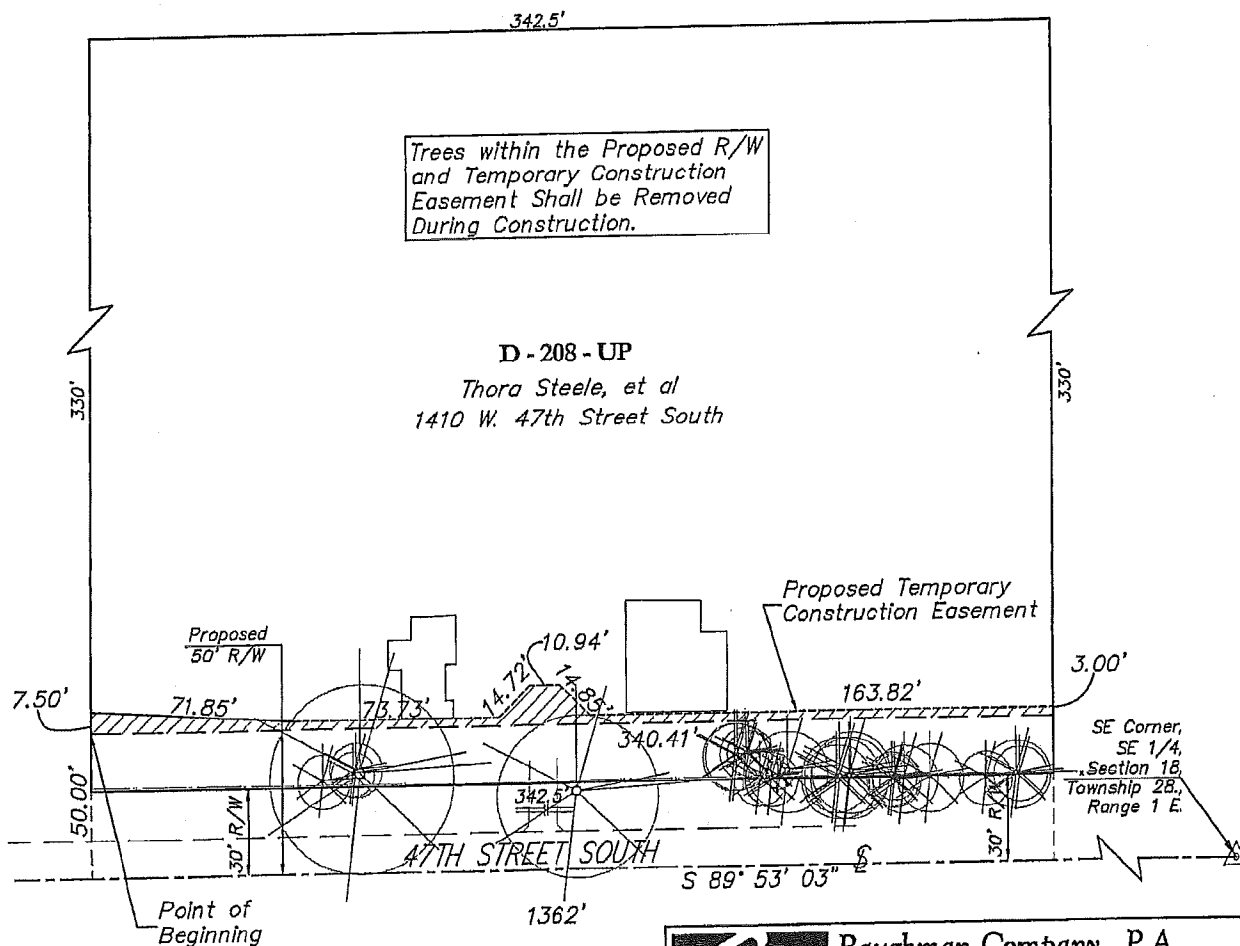
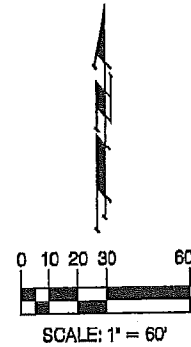
EXHIBIT

LEGAL DESCRIPTION:

A Temporary Construction Easement in Wichita, Sedgwick County, Kansas,
Described as Follows:

Commencing at the SE Corner of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence S 89° 53' 03" W (assumed) along the south line of said Section 18 a distance of 1362 feet; thence N 00° 03' 03" E a distance of 50.00 feet to the Point of Beginning; thence continuing N 00° 03' 03" E a distance of 7.50 feet; thence S 86° 31' 29" E a distance of 71.85 feet; thence N 89° 53' 03" E parallel to the south line of said Section 18 a distance of 73.73 feet; thence N 44° 23' 53" E a distance of 14.72 feet; thence N 89° 53' 03" E parallel to the south line of said Section 18 a distance of 10.94 feet; thence S 45° 06' 57" E a distance of 14.85 feet; thence N 89° 53' 03" E parallel to the south line of said Section 18 a distance of 163.82 feet; thence S 00° 03' 03" W a distance of 3.00 feet; thence S 89° 53' 03" W parallel to the south line of said Section 18 a distance of 340.41 feet to the Point of Beginning.

Containing 1,406.7 Sq. Ft., more or less.



Baughman Company, P.A.

315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149

ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 05-10-E397

F:eng/MacArthur Meridian to Seneca/Exhibits/Steele-Temp.dwg

DATE: 2/11/10

EXHIBIT

LEGAL DESCRIPTION:

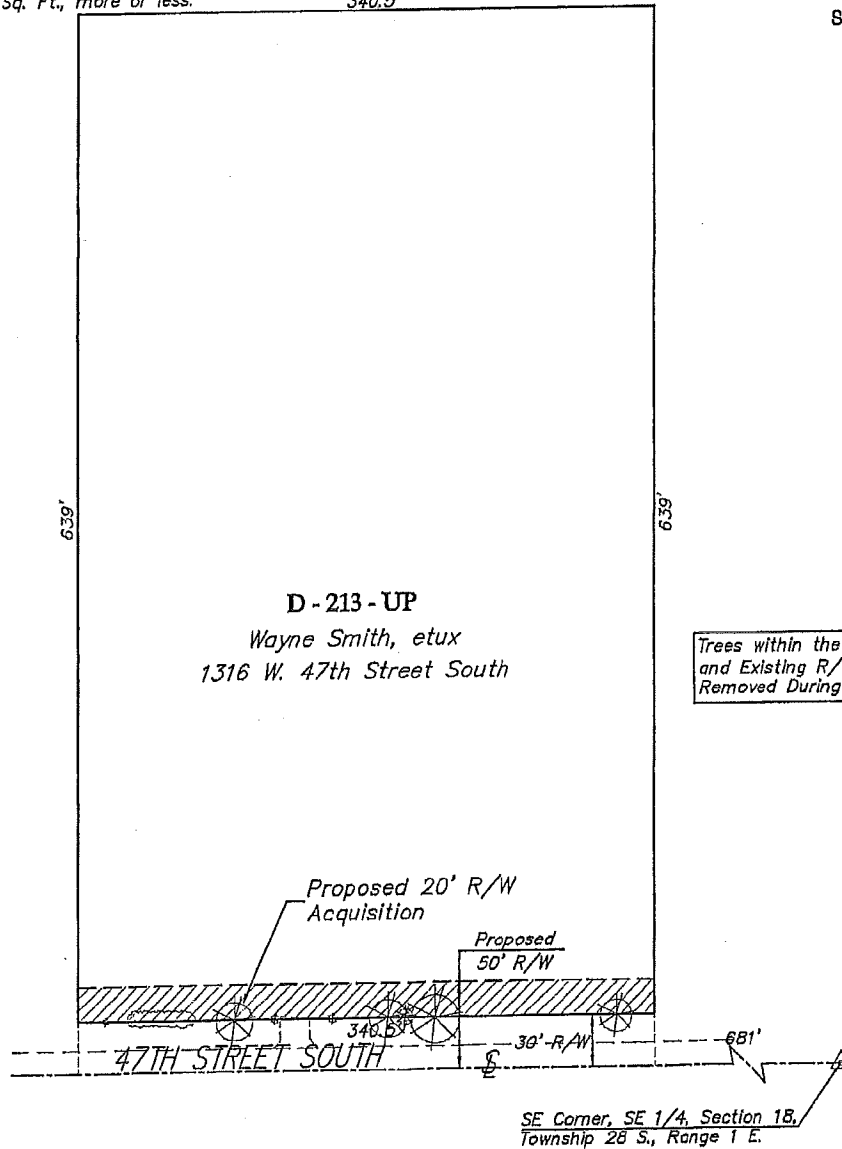
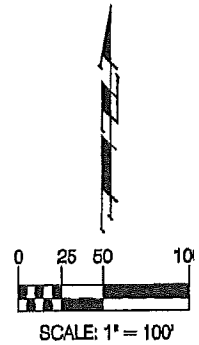
A Proposed 20.00' Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas,
Described as Follows:

The North 20.00 feet of the South 50.00 feet of the following described tract of
land:

A tract of land in the SE Quarter of Section 18, Township 28 South, Range 1 East
of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a
point 681 feet West of the SE Corner of the SE Quarter of Section 18, Township 28
South, Range 1 East, thence North 639 feet; thence West 340.5 feet; thence
South 639 feet; thence East 340.5 feet to place of beginning subject to Road Right
of Way of Record.

Containing 6,807.9 Sq. Ft., more or less.

340.5'



Trees within the Proposed R/W
and Existing R/W Shall be
Removed During Construction.

DATE: 5/20/08

Baughman **Baughman Company, P.A.**
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 05-10-E397

F: eng/47th St South/Exhibits/Smith.dwg

EXHIBIT

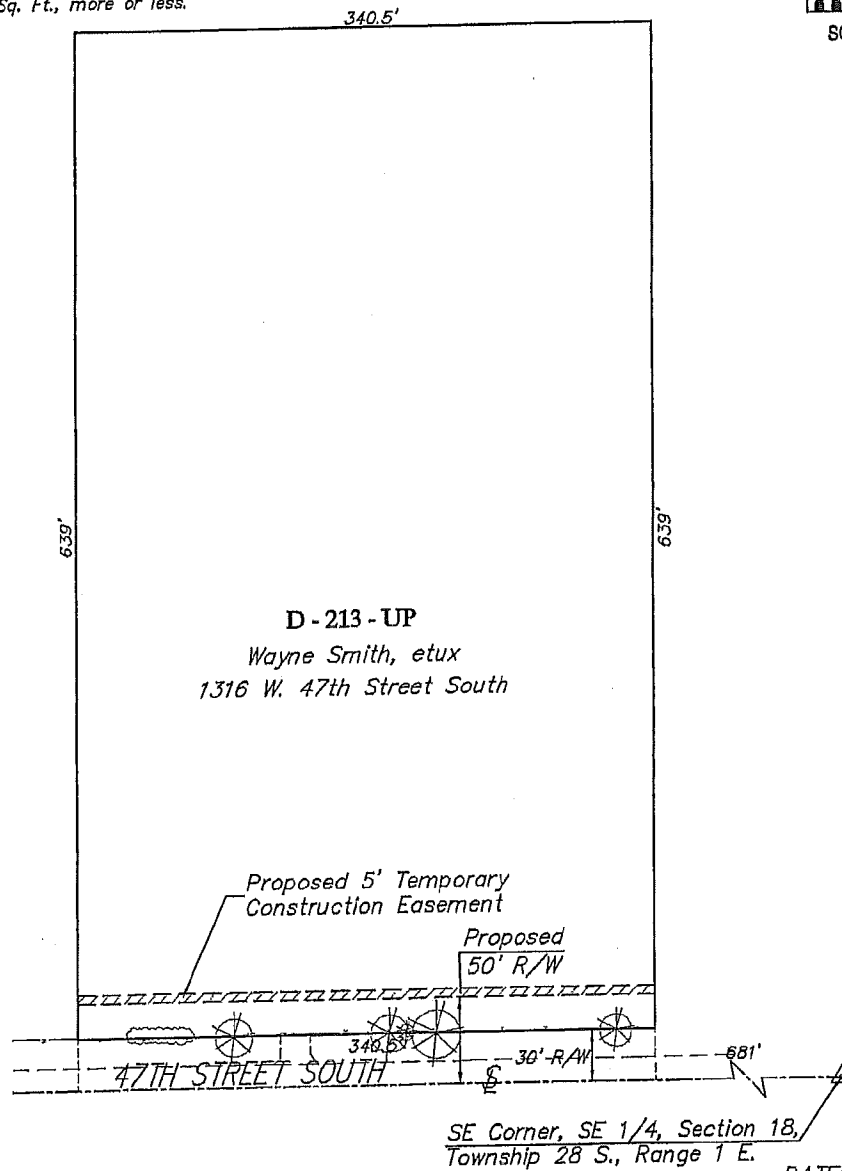
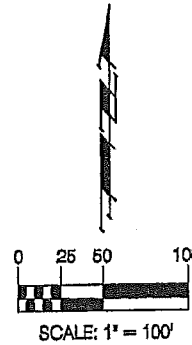
LEGAL DESCRIPTION:

A 5.00' Temporary Construction Easement in Wichita, Sedgwick County, Kansas,
Described as Follows:


The North 5.00 feet of the South 55.00 feet of the following described tract of land:

A tract of land in the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point 681 feet West of the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East, thence North 639 feet; thence West 340.5 feet; thence South 639 feet; thence East 340.5 feet to place of beginning subject to Road Right of Way of Record.

Containing 1,702.0 Sq. Ft., more or less.



DATE: 5/20/08

	Baughman Company, P.A.		
	315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149		
Baughman ENGINEERING SURVEYING PLANNING LANDSCAPE ARCHITECTURE			

Project Number 05-10-E397

F:eng/47th St South/Exhibits/Smith-Temp.dwg

EXHIBIT

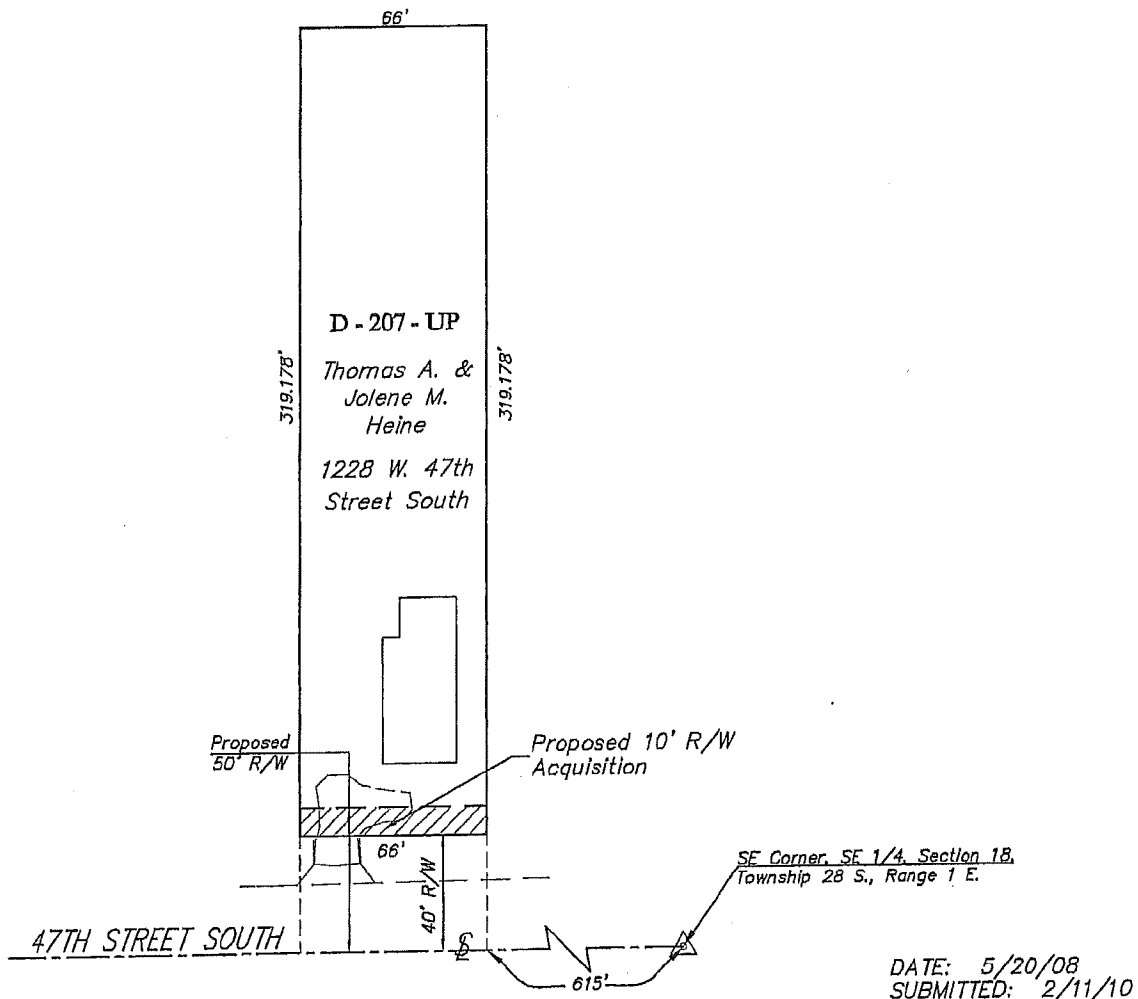
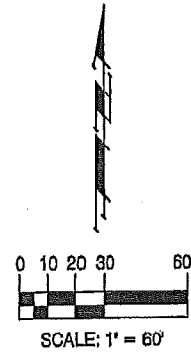
LEGAL DESCRIPTION:

A Proposed 10.00 feet Right-of-Way Acquisition in Wichita,
Sedgwick County, Kansas, Described as Follows:

The South 10.00 feet of the following described tract of land:

A tract beginning 615 feet West of the SE Corner of the SE
Quarter of Section 18, Township 28 South, Range 1 East of the
6th P.M., Sedgwick County, Kansas; thence West 66 feet;
thence North 319.178 feet; thence East 66 feet; thence
South 319.178 feet to the point of beginning, except the South
40 feet thereof for road purposes.

Containing 659.8 Sq. Ft., more or less.



Project Number 05-10-E397

F:eng/47th South/Exhibits/Heine.dwg

Baughman **Baughman Company, P.A.**
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

EXHIBIT

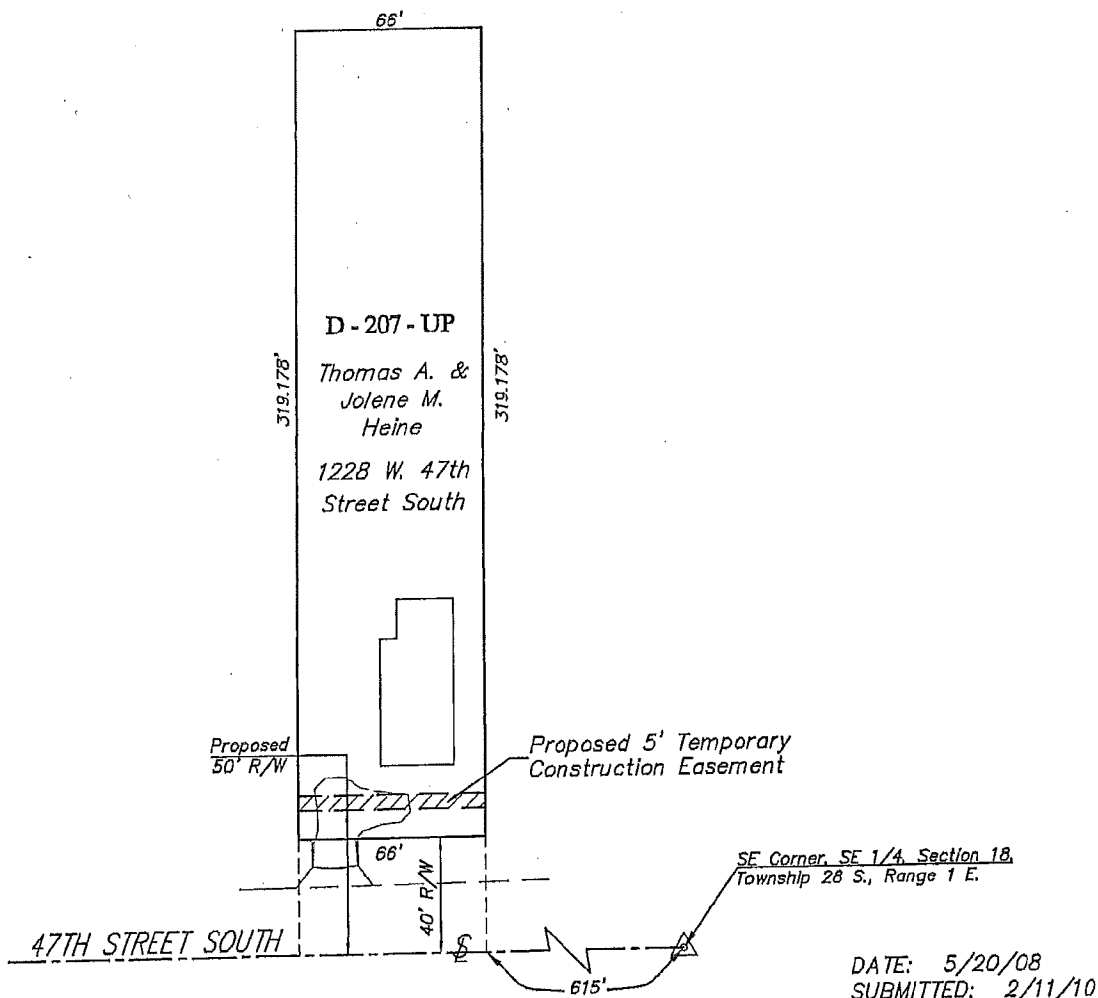
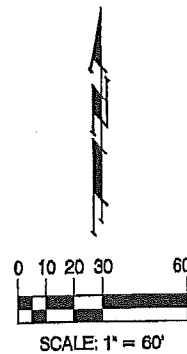
LEGAL DESCRIPTION:

A 5.00 feet Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

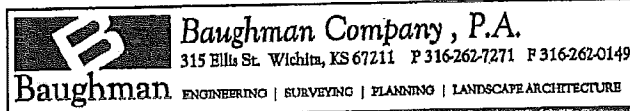
The North 5.00 feet of South 15.00 feet of the following described tract of land:

A tract beginning 615 feet West of the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence West 66 feet; thence North 319.178 feet; thence East 66 feet; thence South 319.178 feet to the point of beginning, except the South 40 feet thereof for road purposes.

Containing 329.9 Sq. Ft., more or less.



DATE: 5/20/08
SUBMITTED: 2/11/10



Project Number 05-10-E397

F:\eng\47th South\Exhibits\Heine-Temp.dwg

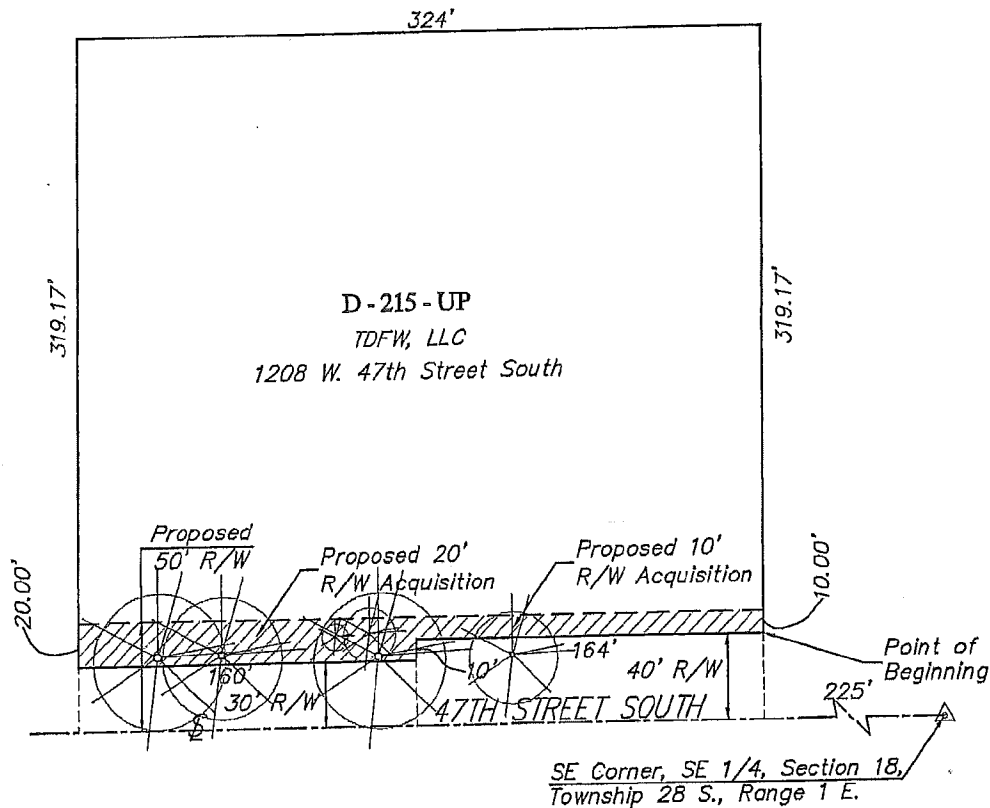
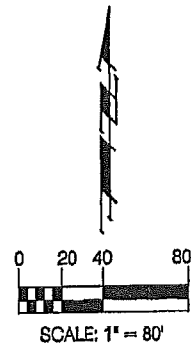
EXHIBIT

LEGAL DESCRIPTION:

A Proposed Right-of-Way Acquisition In Wichita, Sedgwick County, Kansas,
Described as Follows:

Commencing at the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence West along the South Line of said SE $\frac{1}{4}$ a distance of 225.00 feet; thence North parallel to the East Line of said SE $\frac{1}{4}$ a distance of 40.00 feet to the Point of Beginning; thence West along the North Line of that part condemned in Case 92C-465 in the District Court of Sedgwick County, Kansas a distance of 164.00 feet; thence South along the West Line of that part condemned in Case 92C-465 a distance of 10.00 feet; thence West parallel to the South Line of said SE $\frac{1}{4}$ a distance of 160.00 feet; thence North parallel to the East Line of said SE $\frac{1}{4}$ a distance of 20.00 feet; thence East parallel to the South Line of said SE $\frac{1}{4}$ a distance of 324.00 feet; thence South parallel to the East Line of said SE $\frac{1}{4}$ a distance of 10.00 feet to the Point of Beginning.

Containing 4,837.2 Sq. Ft., more or less.



Trees within the Proposed R/W
Shall be Removed During
Construction.

DATE: 5/20/08
SUBMITTED: 2/11/10

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 05-10-E397

F:eng/47th St South/Exhibits/TFDW LLC.dwg

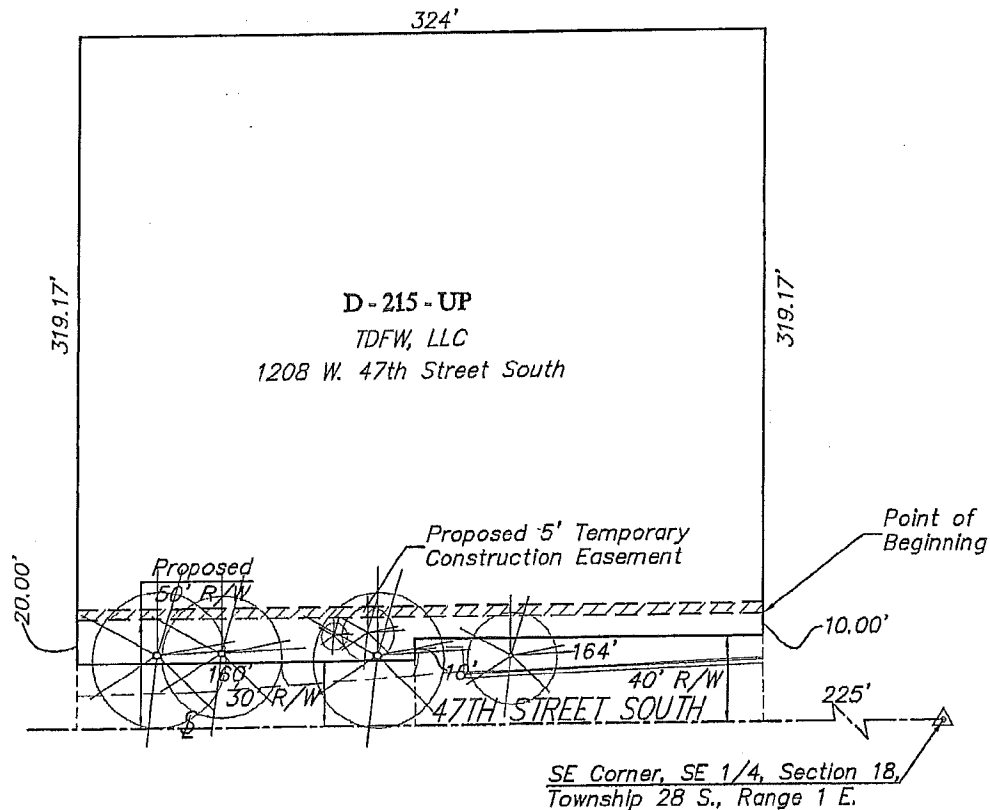
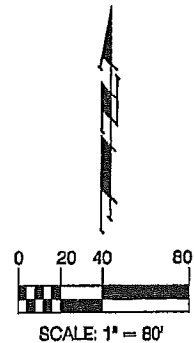
EXHIBIT

LEGAL DESCRIPTION:

A 5.00' Temporary Construction Easement in Wichita, Sedgwick County, Kansas,
Described as Follows:

Commencing at the SE Corner of the SE Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence West along the South Line of said SE 1/4 a distance of 225.00 feet; thence North parallel to the East Line of said SE 1/4 a distance of 50.00 feet to the Point of Beginning; thence West parallel to the South Line of said SE 1/4 a distance of 324.00 feet; thence North parallel to the East Line of said SE 1/4 a distance of 5.00 feet; thence East parallel to the South Line of said SE 1/4 a distance of 324.00 feet; thence South parallel to the East Line of said SE 1/4 a distance of 5.00 feet to the Point of Beginning.

Containing 1,618.7 Sq. Ft., more or less.



Trees within the Proposed R/W and Temporary Construction Easement Shall be Removed During Construction.

DATE: 5/20/08
SUBMITTED: 2/11/10

Baughman Company, P.A.

315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149

ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 05-10-E397

F:eng/47th St South/Exhibits/TFDW LLC-Temp.dwg

EXHIBIT

LEGAL DESCRIPTION:

A Proposed Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

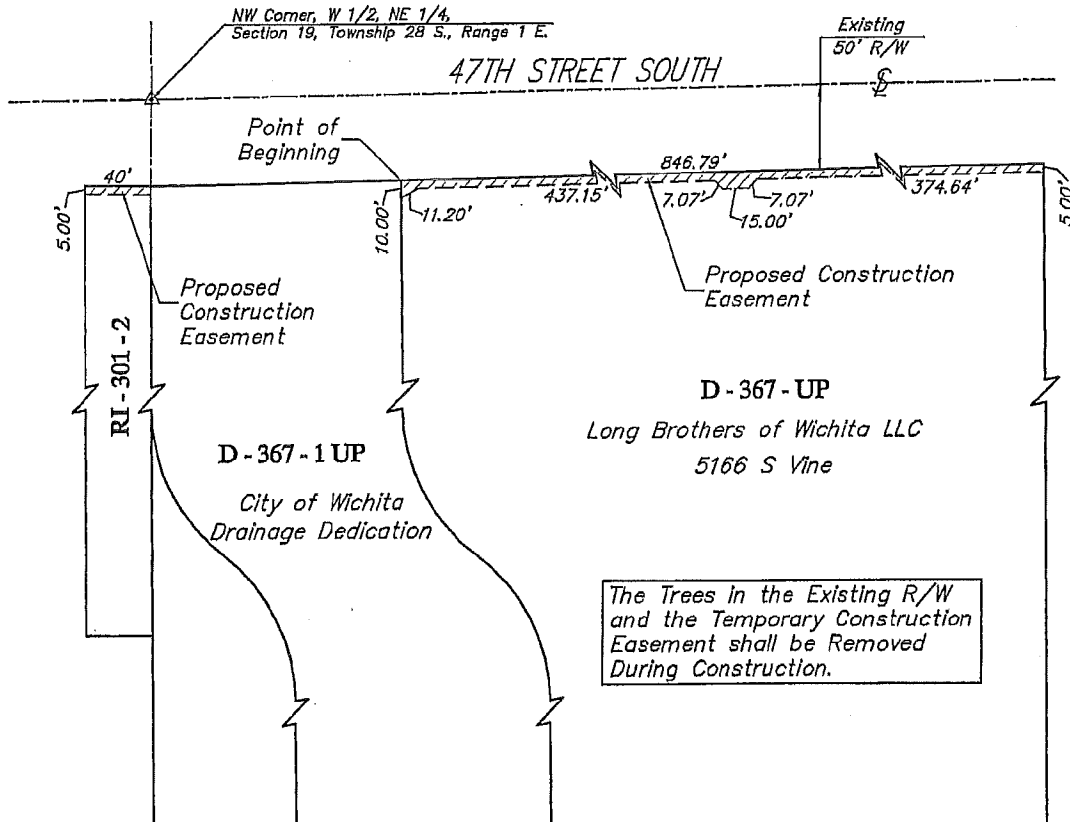
The north 5.00 feet of the following described tract of land:

The east 40 feet of the Northwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas except south 835 feet thereof and except for the North 50 feet thereof for road right-of-way.

AND

Commencing at the Northwest Corner of the West Half of the Northeast Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east along the north line of said Northeast Quarter a distance of 150 feet; thence south a distance of 50.00 feet to the northwest corner of the City of Wichita Drainage Dedication; thence continuing south along the east line of said Drainage Dedication a distance of 10.00 feet; thence northeasterly a distance of 11.20 feet to a point 55.00 feet normally distant south of the north line of said Northeast Quarter; thence east parallel to the North Line of said Northeast Quarter a distance of 437.15 feet; thence southeasterly a distance of 7.07 feet to a point 60.00 feet normally distant south of the north line of said Northeast Quarter; thence east parallel to the North Line of said Northeast Quarter a distance of 15.00 feet; thence northeasterly a distance of 7.07 feet to a point 55.00 feet normally distant south of the north line of said Northeast Quarter; thence east parallel to the North Line of said Northeast Quarter a distance of 374.64 feet to a point on the east line of the west half of said Northeast Quarter; thence north along the east line of the west half of said Northeast Quarter a distance of 5.00 feet; thence west parallel to the North Line of said Northeast Quarter a distance of 846.79 feet to the point of beginning.

Containing 4,559.0 Sq. Ft., more or less.



DATE: 12/7/09 SUBMITTED: 2/11/10

Project Number 05-10-E397

F:eng/47th St South/Exhibits/Long Bros-Temp.dwg



Baughman Company, P.A.

315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149

ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Second Reading Ordinances for April 13, 2010 (first read on April 6, 2010)

Ordinances authorizing the use of Transient Guest Tax Revenues to Finance the WaterWalk Hotel Project. (District I)

ORDINANCE NO. 48-705

An Ordinance of the City of Wichita, Kansas authorizing the issuance of its general obligation bonds in an amount not to exceed \$2,500,000 (exclusive of the costs of interest on borrowed money) to pay certain costs incurred in connection with the construction of a Marriott Fairfield Inn and Suites Hotel at the corner of Dewey and Main streets; and authorizing and providing for the issuance of temporary improvement notes of the city from time to time as funds are needed for such purpose.

CHARTER ORDINANCE NO. 213

A Charter Ordinance amending and repealing Section 1 of Charter Ordinance No. 183 of the City of Wichita, Kansas, which amended and repealed Section 1 of Charter Ordinance No. 174 of the City of Wichita, Kansas, pertaining to the application of revenues from the Transient Guest Tax.

Building Facade Improvement in the Core Area. (District VI)

ORDINANCE NO. 48-701

An ordinance adjusting special assessments on certain lots, pieces and parcels of land in the City of Wichita, Kansas, all pursuant to K.S.A. 12-6a01 ET SEQ. (Building Facade Improvement 324 N. Emporia)

Charter Ordinance Relating to the Issuance of Debt for the Water Utilities.

CHARTER ORDINANCE NO. 211

A Charter Ordinance exempting the City of Wichita, Kansas from the provisions of K.S.A. 10-1210 and providing substitute and additional provisions on the same subject.

Amendment to Section 1.04.150 of the code of the City of Wichita pertaining to Municipal Court Neighborhood Municipal Court Judge and repeal of the original section 1.04.150.

ORDINANCE NO. 48-706

An ordinance amending Section 1.04.150 of the code of the City of Wichita, Kansas, pertaining to Municipal Court Neighborhood Municipal Court Judge and repeal of the original Section 1.04.150

Seneca Street Improvement, I-235 to 31st Street South. (District IV)

ORDINANCE NO. 48-707

An Ordinance amending Ordinance No. 46-162 of the City of Wichita, Kansas declaring Seneca, between I-235 freeway and 31st street south (472-84006) to be a main trafficway within the City of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

Portable Stage Purchase.

ORDINANCE NO. 48-708

An ordinance of the city of Wichita, Kansas authorizing the issuance of its general obligation bonds to pay the costs of acquiring a portable stage compliant with the Americans with Disabilities Act, and the costs of constructing a building to house the stage.

Ordinance Amendments Pertaining to Conduct in Parks, Chapter 9.03.

An ordinance creating sections 9.03.010, 9.03.020, 9.03.030, 9.03.040, 9.03.050, 9.03.060, 9.03.070, 9.03.080, 9.03.090, 9.03.100, 9.03.110, 9.03.120, 9.03.130, 9.03.140, 9.03.150, 9.03.160, 9.03.170, 9.03.180, 9.03.190, 9.03.200, 9.03.210, 9.03.220, 9.03.230, 9.03.240, 9.03.250, 9.03.260, 9.03.270, 9.03.280, 9.03.290, 9.03.300, 9.03.310, 9.03.320, 9.03.330, 9.03.340, 9.03.350, 9.03.360, 9.03.370, 9.03.380, 9.03.390, 9.03.400, 9.03.410, 9.03.420, 9.03.430, 9.03.440, 9.03.450, 9.03.460, 9.03.470, 9.03.480, 9.03.490, 9.03.500, 9.03.510, 9.03.520, 9.03.530, and 9.03.540 of the code of the city of Wichita, Kansas, pertaining to park rules and regulations, and repealing Chapter 9.04 regarding Conduct in Parks.

ZON2010-00002 Associated with CUP2010-00002 – Request City zone change from OW Office Warehouse to MF Multi-Family Residential, GO General Office and LC Limited Commercial, and DP-248 Meadowland Commercial Community Unit Plan Amendment #1; generally located between 127th Street East and K-96, north of the Turnpike. (District II)

ORDINANCE NO. 48-710

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

A10-01 Request by Ian T. and Kamra L. Dopps to annex lands generally located on the south side of 21st street North, approximately one-half mile west of 119th Street West. (District V)

ORDINANCE NO. 48-711

An Ordinance including and incorporating certain blocks, parcels, pieces and tracts of land within the limits and boundaries of the City of Wichita, Kansas. (A10-01)

Harry Street Improvement, between Greenwich and 127th Street East. (District II)

ORDINANCE NO. 48-713

An Ordinance amending ordinance no. 48-626 of the City of Wichita, Kansas declaring Harry, between Greenwich and 127th Street East (472-84884) to be a main trafficway within the City of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.